United States Court of Appeals

for the Second Circuit

APPENDIX

74-1872

ORIGINAL

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

74-2154

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON
WORKERS, A.F.L. - C.I.O.,

Appellant-Appellee,

-against-

KEVIN STEEL PRODUCTS, INC.,

Appellee-Appellant,

-and-

NATIONAL LABOR RELATIONS BOARD,

Intervenor-Appellee.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPELLEE-APPELLANT'S APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
DEC 4 1974
SECOND CIRCUIT

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EXHIBITS

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"1"	Tax Return for year ending 1972	180a	327a
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DOCKET ENTRIES

TAX I. D. NO. 13-2573722 Dist. No. 208

KEVIN STEEL PRODUCTS, INC. Docket No. 73 B 909
Beach Road
West Haverstraw Chapter or Section
Rockland County, N.Y. X1-322

Date Petition Filed
9/13/73

HOWARD SCHWARTZBERG, Referee

Guazzo, Silagi and Craner,
888 Seventh Ave.
New York, N.Y. 10019
TELE: (212) 757-7100
Attorney for Debtor

9/13/73	Filed Petition in proceedings under Chapter X1-322, Schedules, Statement of Assets and Liabilities, Statement of Affairs and Affidavit pursuant to Rule X1-2 (10) Largest Creditors. Referred to: REFEREE SCHWARTZBERG.
9/17/73	Filed Referee's TRUE COPY of Petition and Order authorizing Debtor in Possession to operate business, etc. Dated: 9/13/73.
10/17/73	Filed (COPIES) of Summary of Debts and Assets (2) to Bankruptcy J.
4/15/74	Received from Bankruptcy Judge, NOTICE OF APPEAL and Appellant's Designation of contents for inclusion in the record on appeal, etc., RET. MAY 21ST, 1974 at 10:30 A.M. in Room No. 506.
4/19/74	Filed Stipulation re:Appeal on for 5/21/74 adjourned to: JUNE 25th, 1974. JUDGE PIERCE, DATED: 4/18/74.

DOCKET ENTRIES

4/19/73	Filed Stipulation and Order extending time for appellant's to serve and file brief, extended to and including the 22nd day of May, 1974 and the appellee's time to serve and file brief is extended to and including the 7th day of June, 1974. JUDGE PIERCE, DATED: 4/19/74.
5/22/74	Filed APPEAL BY APPELLANT, Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO from Bankruptcy J.Schwartzberg's Decision Dated: 3/1/74. sub. by: (Sipser, Weinstock, Harper and Dorn, attorneys for Shopmen's Local Union No. 455, Attys. for Appellant)
5/23/74	Filed MOTION of the National Labor Relations Board for leave to intervene, sub. by: Elliott Moore, deputy Associate General Counsel National Labor Relations Bd. by: Abigail Cooley, asst. Gen. Counsel for Special Litigation, Washington D.C. etc. RET. JUNE 11th, 1974 at 10:30 A.M. in Room No. 506. COPY TO BANKRUPTCY J. SCHWARTZBERG.
5/28/74	Filed NOTICE OF HEARING re: Motion for Intervention of the National Labor Relations Board in connection with the Record on Appeal transmitted to Clerk of District Court- for hearing on: JUNE 11th, 1974 at 10:30 A.M. in Room No. 506. (adj. to appeal date)
6/11/74	Filed Stipulation and Order extending time by and between the attorneys, that the National Labor Relations Board proposed intervenor's motion to intervene, (above) is adjourned until June 27th, 1974 at 3:00 P.M. before JUDGE KNAPP; signed by: JUDGE KNAPP, DATED: 6/11/74.
6/21/74	Filed MEMORANDUM in opposition of motion of National Labor Relations Board's motion to intervene., sub. by: Guazzo, Silagi and Craner, attys. for Appellee, KEVIN STEEL PRODUCTS, INC., Dated: 6/19/74.

DOCKET ENTRIES

6/21/74	Filed APPELLEE Kevin Steel Products, Inc.'s., BRIEF in support of Bankruptcy Judge SCHWARTZ-BERG'S Decision dated: 3/1/74., sub. by: Guazzo, Silagi and Craner, attys. for Appellee, KEVIN STEEL.
6/26/74	Filed BOARD'S REPLY to opposition to its motion to intervene, etc., sub. by: Elliott Moore, Deputy Associate General Counsel, National Labor Board, by: Abigail Cooley, Asst. Gen. Counsel for Special Litigation, Washington, D.C. Dated: 6/25/74. f.
6/27/74	Filed REPLY BRIEF of APPELLANT, SHOPMEN'S Local Union No. 455, International Assoc. of Bridge, Structural and Ornamental Iron Workers, AFL-CIO - SUB. BY: Sipser, Weinstock, Harper and Dorn, attorneys for Appellant. f.
8/8/74	Filed OPINION NO. 41080 re: Shopmen's Local Union No. 455's Appeal pursuant to Rule 801 from decision of Bankruptcy J. Schwartzberg permitting debtor in possession to reject their collective bargaining agreement, etc., the order of the Bankruptcy Judge is reversed. The effect of this order is stayed for a period of fifteen days to permit the perfection of an appeal to the Court of Appeals, any application for a further stay to be made to that Court. So Ordered.
8/15/74	Filed NOTICE OF APPEAL of Kevin Steel Products, Inc., from Opinion of JUDGE KNAPP, Dated: 8/1/74 reversing the decision of Bankruptcy Judge Schwartzberg permitting the debtor in possession to reject an executory collective bargaining agreement and allowing the National Labor Relations Board to intervene. sub. by: Guazzo, Silagi and Craner, attys. for Appellee-Appellant, Dated: 8/13/74.(2) Notices mailed.
9/25/74	Filed Notice that record on appeal has been certified and transmitted to the USCA for the 2nd Cir.
11/7/74	$250.00 received by Cashier in lieu of bond.

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

IN BANKRUPTCY
73 B 909

KEVIN STEEL PRODUCTS, INC.,

Debtor.

S I R S:

PLEASE TAKE NOTICE that upon the annexed petition of KEVIN STEEL PRODUCTS, INC., dated December 20 1973, the exhibits annexed thereto, and upon all of the papers and proceedings heretofore had herein, the undersigned will apply to Honorable HOWARD SCHWARTZBERG, Referee in Bankruptcy, at the Bankruptcy Courtroom, 30 South Broadway, Yonkers, New York, on the 9th day of January, 1974 at 10:00 A.M. in the forenoon for an order permitting petitioner to cancel and reject the unexpired portion of the executory collective bargaining agreement between KEVIN STEEL PRODUCTS, INC., bankrupt herein, and SHOPMEN'S LOCAL UNION 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL and ORNAMENTAL IRON WORKERS, AFL-CIO, and given retroactive effect thereto from

NOTICE OF MOTION

July 1, 1973, by Order of the Administrative Law Judge of the National Labor Relations Board, dated November 21, 1973.

Dated: New York, N.Y.
December 17, 1973.

YOURS, etc.,

GUAZZO, SILAGI & CRANER, P.C.
Attorneys for Petitioner
888 Seventh Avenue
New York, N.Y. 10019

(212) 757-7100

TO:
SIPSER, WEINSTOCK, HARPER
& DORN, ESQS.,
Attorneys for
SHOPMEN's LOCAL UNION NO. 455
380 Madison Avenue
New York, New York 10007

PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

TO THE HONORABLE HOWARD SCHWARTZBERG
REFEREE IN BANKRUPTCY

The petition of KEVIN STEEL PRODUCTS, INC., debtor, respectfully shows and alleges:

1. That your petitioner is the bankrupt herein, having filed for an arrangement pursuant to Chapter 11 of the Bankruptcy Act on September 13, 1973.

2. That the prime reason for the economic difficulties leading up to the filing of the Chapter 11 petition herein, was labor problems with SHOPMEN'S LOCAL UNION 455. Specifically, high wages demanded by the Union for its employees, coupled with a deliberate restriction in workers' productivity, made it impossible for petitioner to compete. As a result, petitioner was forced to file a Chapter 11 petition.

3. Petitioner and SHOPMEN'S LOCAL UNION 455, had a collective bargaining agreement in effect from July 1, 1970 through June 30, 1973. Commencing

sometime at the beginning of 1973, petitioner and Union got involved in a series of disputes. It is of interest to this motion only that it became disputed whether in fact petitioner accepted from the Union, a certain proposal as an interim contract, subject only to agreement on appropriate language, or whether petitioner herein reserved its rights to enter into such contract.

4. In a decision and order dated November 21, 1973, the Administrative Judge of the National Labor Relations Board decided that petitioner violated Section 8(a)(5) and 8(a)(1) of the National Labor Relations Act, by refusing on or after June 1, 1973 to sign a document embodying the agreement between petitioner and Union. The NLRB Administrative Judge ordered petitioner to execute the contract submitted by the Union on June 1, 1973, and give retroactive effect thereto from July 1, 1973.

5. It is for the best interest of petitioner, as well as the creditors generally, that your petitioner be permitted to cancel and reject the unexpired portion of said collective bargaining agreement.

PETITION

6. If petitioner is required to comply with the terms of said contract, it will be forced to pay each employee (there is a normal work force of 15) salary and benefits totalling $9.00 an hour per each man. Without a Union contract, petitioner can employ workers at $3.50 an hour. It is quite obvious that unless the executory Union contract is cancelled, it is economically impossible for petitioner to present any plan to the creditors that could have any reasonable chance of success, and be accepted by said creditors.

WHEREFORE, it is respectfully requested that petitioner be permitted to cancel and reject the unexpired portion of the aforesaid contract.

KEVIN STEEL PRODUCTS, INC.,
Petitioner

By s/ Robert Palatnik
President

GUAZZO, SILAGI & CRANER, P.C.
Attorneys for Petitioner
888 Seventh Avenue
New York, N.Y.

[Duly verified by
Robert Palatnik on
December 20, 1973.]

By s/ Mitchel B. Craner
Mitchel B. Craner
A member of the Firm

EXHIBIT - DECISION OF ADMINISTRATIVE LAW JUDGE OF NATIONAL LABOR RELATIONS BOARD - ANNEXED TO PETITION

J. _,03-73
West Haverstraw, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

KEVIN STEEL PRODUCTS, INC.

and

Case No 2-CA-13002

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON
WORKERS, AFL-CIO

Thomas T. Trunkes, Esq., for
the General Counsel.
Caesar C. Guazzo, Esq., New York,
N.Y., for Respondent.
Belle Harper, Esq., New York,
N.Y., for the Charging Party.

DECISION

SIDNEY SHERMAN, Administrative Law Judge: The initial charge herein was served upon Respondent on June 11, 1973, 1/ the complaint issued on July 31, and the case was heard on August 28 and 29. After the hearing briefs were filed by Respondent and the General Counsel. Upon the entire record, 2/ the following findings and recommendations are made:

I. Respondent's Operations in Commerce

Kevin Steel Products, Inc., hereinafter called Respondent, is engaged in the fabrication and distribution of steel and related metal products at its establishment in West Haverstraw, New York. It annually sells more than $500,000 worth of products, of which more than $50,000 in value is shipped to out-of-State points. Respondent is engaged in commerce.

1/ All events hereinafter related occurred in 1973, unless otherwise indicated.
2/ For corrections of the transcript, see the order of October 29.

EXHIBIT - DECISION OF ADMINISTRATIVE LAW JUDGE OF NATIONAL LABOR RELATIONS BOARD - ANNEXED TO PETITION

II. The Union

Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, is a labor organization under the Act.

III. The Merits

A. The Issues

The pleadings, as amended at the hearing, raise the following issues:

1. Whether Respondent has violated Section 8(a)(1) by offering employees inducements to defect from the Union?

2. Whether Respondent laid off, and subsequently terminated, certain employees because of their Union activity and because the Union refused to remove Leggio as its shop steward, thereby violating Section 8(a)(3) and (1)?

3. Whether Respondent has refused to bargain with the Union since June 4?

4. Whether Respondent has violated Section 8(a)(5) and (1), by refusing to sign an agreement reached between it and the Union.

5. Whether the Board should defer the taking of jurisdiction herein pending the conclusion of certain arbitration proceedings dealing with some of the matters involved herein?

B. Sequence of Events

Respondent has been engaged in the steel fabrication business in West Haverstraw, New York. Early in 1973, it had about 15 shop employees, and an unspecified number of other employees, who did installation work in the field. Only the former are involved herein. For some years, Respondent has had contractual relations with the Union as the representative of the shop employees, the last such contract having been in effect from July 1, 1970 through June 30, 1973. That contract contained a provision for arbitration of grievances. The Union's chief shop steward during the term of that contract was Leggio. On February 15, the employees struck because of Respondent's delinquency with respect to various trust funds established by the parties' contract. By letter dated February 15, Respondent notified the strikers that they were being laid off for lack of work. By February 21, Respondent had satisfied its obligation to the trust funds and the Union on that date announced termination of the strike and asked Respondent's president, Palatnik, how many men he needed to resume operations. He answered that he did not

EXHIBIT - DECISION OF ADMINISTRATIVE LAW JUDGE OF NATIONAL LABOR RELATIONS BOARD - ANNEXED TO PETITION

need any at that time, but would continue to operate as he had during the strike with but one employee to help him. About March 1, the Union's president, Colavito, discussed the reasons for the layoffs with Palatnik, who insisted that he had no work for the men, adding that, even if he did have work, he would not recall them as long as Leggio was shop steward. On March 30, Respondent notified the laid off employees that it was necessary "to permanently terminate" them because there was no reasonable expectation of their being recalled.

About May 1, negotiations for a new contract, to succeed the one expiring on June 30, commenced. At this and subsequent meetings -- on May 15 and 21 -- the main bone of contention was wage rates and the recall of Leggio. On May 21, Colavito proposed that the existing contract be extended, pending negotiations between the Union and an industry association, and that upon the conclusion of such negotiations Respondent adopt the association contract. Palatnik suggested that an appropriate draft be prepared by the Union's counsel and cleared with Respondent's counsel. On June 1, when Colavito returned with a draft of his proposal and advised Palatnik it had been cleared with his lawyer, Palatnik insisted, nevertheless, on calling his lawyer, who arranged a meeting for further discussion of the proposal. However, a few days later that meeting was cancelled by Palatnik, who subsequently advised Colavito that he would not sign the contract.

In the meantime the Union had submitted to arbitration various issues, including the propriety of Respondent's refusal on February 21, to recall Leggio and the other strikers. Such arbitration was still in progress at the time of the instant hearing.

C. Discussion

1. The deferral issue

Section 10 of the parties' contract established a grievance procedure for handling any "complaints, disputes or grievances" submitted to the shop stewards by employees, and it was further provided that any "difference, grievance or dispute" which was not otherwise settled through that procedure and "any difference or dispute between the Company and the Union arising out of this Agreement or as to the meaning, application or alleged violation of any provision, or provisions of this Agreement shall, upon request of either party to this Agreement be submitted to" final and binding arbitration. Section 15(B) of the contract forbids discipline or discharge except for "proper cause." In Section 11 of the contract Respondent renounces resort to "lockouts," subject to certain exceptions not here relevant.

At the time of the instant hearing there was pending an arbitration proceeding between the parties over various matters, including the "lockout" of February 15, and the failure to recall Leggio. At the hearing, Respondent moved that the Board defer any action on the merits herein pending the outcome of such proceeding, citing Collyer Insulated Wire.3/ Ruling on that motion was reserved at the hearing.

The question of deferral is here complicated by the fact that, in addition to acts by Respondent, which arguably violate the contract and are currently the subject of arbitration proceedings -- namely, the failure to recall, and termination of, various employees -- the complaint alleges conduct which clearly involves no breach of contract but only of a statutory duty. The propriety of deferral in such a situation was considered in George Koch Sons, 4/ where the issue was whether the Board should defer to arbitration with respect to the legality of a work stoppage in a case where there was also involved the legality of a union fine, a matter beyond the purview of the parties' grievance and arbitration procedure and one which was decided in that case by the Board on the merits. The Board there said:

> . . . since we are in any event required to take jurisdiction in order to determine the issue of whether the fine was violative of our Act, there seems less reason to defer the other issue raised by the complaint; namely, the Union's conduct with respect to the strike. When an entire dispute can adequately be disposed of under the grievance and arbitration machinery, we are favorably inclined toward permitting the parties an opportunity to do so. One of our reasons for so doing is to avoid multiplicity of forums. But, here, since we must perforce determine a part of the dispute, there is far less compelling reason for not permitting the entire dispute to be resolved in a single proceeding.

Here, too, the entire dispute cannot be disposed of under the contractual grievance and arbitration machinery; for, the complaint raises two issues clearly beyond the purview of such machinery -- namely, the alleged violation of Section 8(a)(5) by Respondent's refusal to execute a contract and its alleged solicitation of employees to defect from the Union. Moreover, there is another consideration militating against deferral of any part of this case. In Collyer, the Board stressed as a condition favoring deferral the absence of any "claim . . . of enmity by Respondent to the employees' exercise of protected rights." Here, there is not only a claim, but it found below, that Respondent has unlawfully frustrated the efforts of the Union to conclude an agreement with it on behalf of the employees and that it has attempted since early in 1972 to induce employees to defect from the Union by various promises of benefit.

For all the foregoing reasons, Respondent's motion to defer to arbitration is denied.

3/ 192 NLRB 837.
4/ 199 NLRB No. 26.

2. Solicitation of employees to abandon the Union

The complaint alleges that on various dates in January and February Respondent offered inducements to the employees to abandon the Union.

As background evidence on this issue the General Counsel adduced testimony by Burrett, corroborated by Union agent Steinhauser, that early in 1972, Respondent's president, Palatnik, offered the employees more liberal fringe benefits, if they would repudiate the Union; and, Prah testified that "beginning in 1972" he had conversations with Palatnik, in which the latter promised to make certain improvements in the existing retirement and hospitalization plans, if the employees would defect from the Union, but, when Palatnik urged him to relay this message to others in the shop, Prah refused to do so. 5/

Notwithstanding Palatnik's denials, the foregoing testimony is credited on the basis of demeanor considerations.

Viera testified that he joined in the strike on February 15, and that the next day, when he returned to the plant for his pay, Palatnik promised that he would have plenty of work, if he went "non-union." Viera appeared to be a sincere witness and his testimony is credited, despite Palatnik's denial. Accordingly, it is found that by Palatnik's offer to recall Viera, if he forsook the Union, Respondent violated Section 8(a)(1) of the Act.

3. The 8(a)(3) issue

The General Counsel contends that 19 shop employees, including Leggio, were laid off by Respondent on or about February 15, and discharged on or about March 30, because of their Union activity and because the Union refused to remove Leggio as chief shop steward, and that Respondent thereby violated Section 8(a)(3) and (1). Respondent concedes the layoffs and discharges but denies that they were motivated by improper considerations.

5/ Since the incident related by Burrett occurred beyond the period of limitations prescribed by Section 10(b) of the Act, it is considered here only as showing Respondent's Union animus. The incident involving Prah is, also, considered only in that light. (Not only is it apparently barred by Section 10(b), but the record shows that, although a Union member, Prah was a supervisor by reason of his authority to hire employees and to decide what probationary employees to retain at the end of their trial period. Accordingly, for that reason alone, any blandishments offered him to forsake the Union would not violate the Act.)

The employees struck on February 15, because Respondent owed about $15,000 to the trust funds established by the parties' contract. The same day, Respondent mailed a letter to the strikers notifying them that they were being laid off for lack of work and that they would be advised when they were again needed. On February 21, Respondent having paid up its obligation to the trust funds, Union agent Steinhauser informed Respondent's president, Palatnik, that the strike was over and the pickets were being removed, and asked how many men Palatnik was going to reinstate at that time. Palatnik answered that he was not going to recall anyone except Bolson, a finisher. When Steinhauser demanded that Leggio be recalled, since he was the senior crane operator (as well as the chief shop steward, with superseniority under the contract) and the services of a crane operator would be needed to assist Bolson, Palatnik answered that he, himself, would perform whatever crane work was needed.

Until July 1, Respondent continued to operate with only Bolson in the shop, assisted by Palatnik on the crane, and to an unspecified extent by Mannocchi, one of his former employees, and several nonunit personnel. 6/ On July 1, the contract having expired, Respondent's former employees resumed picketing, to protest its failure to execute a new contract. Apparently, about the same time Respondent recalled several more of its former employees, and at the time of the hearing it was still operating on a limited basis and was still being picketed.

Prah, who joined in both strikes, testified that, when he returned to the plant on February 20 for his pay, Palatnik stated there was nothing he could do about recalling Prah at the moment and that he was going "to try to stick it out" until July 1st, 7/ but that he would be willing to "open the shop" if the Union would replace the "shop steward." Burrett testified that during the strike Palatnik told him that he deplored the existing situation but "he could not do anything else because of the union," that the witness could go back to work for him at any time but Palatnik could not "open the shop" so long as Leggio would work there.

Although disputing Burrett's account, Palatnik acknowledged that he had made the statement that he would not recall Leggio "as shop steward" because he was "overstepping his role as shop steward" and that he had told Prah on February 20, that he would not recall anyone until Leggio was replaced as shop steward. Palatnik, nevertheless, denied that the purpose of the layoff was to force the replacement of Leggio as shop steward, declaring that it was due solely to lack of work. 8/ However, when asked

---

6/ Colavito testified without contradiction that, when he visited the plant on June 1, he saw several office employees and Mannocchi, as well as Bolson, doing unit work.

7/ That was the expiration date of the Union's contract.

8/ Palatnik explained that on February 15, the only substantial order in the shop consisted of work he was doing under sub-contract, and that, when the employees struck, he notified the customer that he could not guarantee delivery because of the strike, whereupon the customer canceled the order.

whether he would have recalled the employees, if Leggio had been ousted as shop steward, Palatnik answered:

> I would have maybe called back maybe only a very few employees, maybe the foreman and one other employee, just to clean up the place, just to keep the place going. 9/

Thus, by his own admission, Palatnik's refusal to recall the laid off employees was attributable at least in part to his opposition to Leggio because he was "overstepping his role as shop steward."

Prah related a further conversation with Palatnik on February 27, in which the latter stated that he was prepared to recall six or seven men but not "the shop steward." Palatnik's version was that on that occasion he told Prah only that he would not recall anyone due to lack of work. However, Prah is credited on the basis of demeanor.

Although Palatnik testified at some length about the dearth of work in the shop after February 15, and the reasons therefor, it is found, on the basis of his afore-noted admission at the hearing, as well as that made to Prah on February 27, that, had he been so minded, Palatnik would then have been able to provide work for some of the laid off employees but did not do so because of his aversion to Leggio and his apparent belief that, if he recalled any of the other men, he would be obligated by the Union contract to recall Leggio, also.

While not disputing that Palatnik was opposed to recalling Leggio, Respondent contends that such opposition stemmed solely from Leggio's "improper activities, e.g., inhibiting productivity, causing breakdowns, insubordination and a threat to 'get the boss.'" Palatnik explained that his difficulties with Leggio began with an incident in the fall of 1972, when a dispute arose over the failure of Palatnik to call Leggio in on a Saturday, when some work was being done on the plant building. 10/ Palatnik added that, when, soon thereafter, he had occasion to rebuke Leggio for poor workmanship on a painting job, Leggio retorted that Palatnik was "picking on" him because of the afore-cited Saturday-work incident and declared that

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9/ This testimony seems to reflect the assumption by Palatnik that Respondent was not permitted by the Union contract to recall even one or two men for clean-up work without bringing Leggio back as shop steward. The basis for this assumption is not clear from the record. However, it suffices for present purpose that Palatnik believed that to be the case and was admittedly motivated by that belief.

10/ The contract requires that "the shop steward shall be one of the employees assigned to overtime work." The dispute over Respondent's alleged violation of that provision is now in arbitration.

Palatnik was "a challenge to" him and he was "going to get" Palatnik. This incident apparently inspired the following letter of October 31, 1973, to the Union:

> On numerous occasions, I have discussed with you the difficulties we have with Salvatore Leggio.
>
> Mr. Leggio does not perform his duties with the competence required. In addition, his negative attitude is reflected in the performance of his duties as Shop Steward. His apparent resentment of me personally and this business, which provides a livelyhood (sic) for so many people, has now been brought into the open.
>
> On October 30, 1972 in the presence of others, he threatened me and the very existence of my business. This threat arose from the fact that when requested to do a certain job, Mr. Leggio did it in such an inadequate manner, that it was brought to his attention by the Shop Foreman. His response to the criticism was if you don't like it call the delegate. His response to my telling him he must learn to do a proper job was, 'If I don't like it I can have some one else do it."
>
> Mr. Leggio does not run my business nor will I permit him to do so. He will do his job competently or he can leave.
>
> After making this 'or else' statement he said he would place a security guard around the clock to make sure he caught me doing something wrong and then the threat to which I previously referred. He said and I quote, 'Bob, you're a challenge to me and I am going to get you.
>
> It was never my impression your union countenanced such an attitude, nor was it your desire to 'get me' or Kevin Steel Products, Inc.
>
> This is the culmination of a series of incidents and statements which can lead to no other conclusion but that Mr. Leggio wants to get me. In order to do so he must, of course, damage the business. An alternative is that his threat to get me is a physical threat, however, I doubt that.
>
> Mr. Leggio's attitude was exposed for all to see, that of an enemy boring from within, who out of spite, ignorance or viciousness has set as his goal, the destruction of my business.
>
> I realize that short of a singular destructive act by him, he will not destroy me. However, single invidious acts of malfeasance and nonfeasance directed against me and my business, must have a cumulative deleterious effect and impede the progress and growth of a business important to me and my employees.

I call upon you, known to me to be responsible and in the highest tradition of labor leaders, to investigate this problem. It is not in the best interest of the union or me that such problems continue.

Palatnik testified further that after the incident described in the foregoing letter, and while he was in the plant washroom, he overheard Leggio upbraid another employee for working too fast; that during November and December 1972, in his job of operating the overhead crane, Leggio burned out two motors through an improper operating procedure; that the witness rebuked Leggio three or four times on that account but to no avail; that the witness did not discharge Leggio therefor because he had a "reasonable doubt" at the time about Leggio's responsibility for the damage to the motors; that, after having operated the crane, himself, for 4 or 5 months thereafter without any maintenance problems the witness is now convinced that Leggio was in fact responsible for such damage; that in December 1972, when the witness personally took over the supervision of a job in order to expedite it, Leggio took sick leave the next day; that two of the employees told the witness that Leggio had taken off in order to hinder Palatnik's efforts to expedite the job; 11/ that the witness believes that Leggio was responsible for a general slowdown, which resulted in that particular job taking 1,500 hours longer to complete than normal; and that the witness concluded from the foregoing events that Leggio was engaged in a plot to undermine him.

Leggio, on the other hand, attributed the maintenance problems with the crane to matters unrelated to his operating procedure, asserting that he based this view in part on information he received from the shop maintenance man, Thompson, as to the cause of those problems, and he expressly denied any mishandling of the crane. He denied, also, that he instigated any slowdown in the shop, explaining that the sick leave cited by Palatnik was due to a dental appointment and insisting that there was no washroom incident such as Palatnik described. His version of the "challenge" remark was that at the time of that incident he was seeking a monetary award in the arbitration proceeding involving the "Saturday-work" incident and that all he told Palatnik was that "that money was a challenge to" him and that he "would go out to get it." Respondent's maintenance man, Thompson, was not called by Respondent to corroborate Palatnik's charge of abuse of equipment by Leggio and no explanation was offered for this omission, and, as noted above, Palatnik, himself, admitted to uncertainty as to the cause of the breakdown of the equipment until after he had, himself, operated it for 4 or 5 months. In view of these circumstances, I credit Leggio's denial of responsibility for any damage to the crane's motor and of employing the improper, operating procedure, to which Palatnik ascribed his suspicion that Leggio was responsible for the frequent breakdowns of the crane. Accordingly, it is found not only that Leggio did not, in fact,

11/ Palatnik explained that it was necessary to replace Leggio for that day with an inexperienced man, who could not maneuver the crane as skillfully as Leggio, thereby slowing down the work.

mishandle the crane, but also that Palatnik did not have any reason to believe that such was the case, and the inference is, therefore, warranted that, contrary to Palatnik's testimony, he did not actually entertain any such belief either before or after February 15. However, I do not credit Leggio's rather strained explanation of the "challenge" remark, and find that he did make such a remark in the terms described by Palatnik, and, in view of the circumstantiality of his account of the matter, credit Palatnik's testimony about the washroom incident. Absent any contradiction thereof, Palatnik's testimony about the report he received concerning Leggio's reason for taking sick leave on December 1972, is also credited.

While the three incidents last mentioned might be deemed to have justified Palatnik in believing that Leggio was bent on disrupting Respondent's operations by instigating a general slowdown, the following matters militate against the credibility of his testimony that he actually entertained such a belief or that his objection to recalling Leggio was motivated solely by such a belief.

a. In a letter to the employees of January 29, Palatnik referred to the "large number of problems which have arisen as a result of what we believe to be excessive zeal if nothing else, of union representatives" (emphasis added). Palatnik acknowledged that the foregoing referred, at least in part, to Leggio.

b. Palatnik did not dispute Colavito's testimony that at a meeting between them early in March Palatnik explained that he objected to Leggio because he was constantly "raising questions" about the administration of the contract, and opposing the assignment of laborers to do mechanics' work, departures from seniority in layoff, and deviations from the contract in selecting employees for overtime work. Prah, who, as found above, was a supervisor, confirmed that there were occasions when he attempted to "sneak" laborers into mechanics' jobs, which provoked complaints by Leggio to Palatnik. And, Leggio ascribed Palatnik's "bitterness" toward him to Leggio's efforts to enforce the contract.

c. As noted above, Palatnik acknowledged at the hearing that he had declared that he would not let Palatnik return as shop steward because "he was overstepping his role as shop steward."

d. Although Palatnik professed to believe, at least as early as October 31, that Leggio was plotting Respondent's downfall, he made no effort to initiate the procedure prescribed in the contract for the discharge of a shop steward nor did he take any other disciplinary action against him, retaining Leggio as an employee until February 15, when he joined the strike. Moreover, Palatnik maintained at the hearing that during the period of the layoff he considered allowing Leggio to return as an employee, albeit not as a shop steward.

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e. It seems inherently improbable that because of a grievance over one day's pay, Leggio would want to destroy Respondent's business on which he and his fellow Union members depended for their livelihood or that Palatnik would in good faith believe that Leggio would take such action for such a reason.

In view of all the foregoing considerations, it is found that Palatnik's antipathy toward Leggio stemmed mainly from his insistence on Palatnik's compliance with the contract in the matter of work assignments and the selection of employees for overtime work and layoffs. It is apparent that Leggio's inflexibility in these areas was resented by Palatnik because it frustrated his efforts to promote efficiency of operations and reduce costs at a time when Respondent's financial position was precarious. While it is clear that the incident referred to in the letter of October 31, 1972, generated a strong, emotional reaction on Palatnik's part and, while he may have genuinely believed at that time that Leggio was bent on undermining Respondent's operations, it is significant that Palatnik made no specific reference to that charge in any of his later communications to the employees or the Union about Leggio, but stressed only his resentment of Leggio's zeal as a steward. It is inferred, therefore, that the October 31 letter reflected only a passing reaction to the October 22 incident and that any effect thereof was secondary to the more realistic and substantial objections by Palatnik to Leggio's strict enforcement of the Union's contract.

It having been found, on the basis of Prah's credited testimony, that Palatnik would have recalled six or seven of the strikers on February February 21, but for his opposition to Leggio, and that such opposition was due in large part, if not entirely, to Leggio's zeal in enforcing the Union's contract, it follows that such failure to recall was for discriminatory reasons and that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

4. The 8(a)(5) issue

The General Counsel contends that Respondent violated Section 8(a)(5) and (1) on and after June 1, by refusing to execute an agreement, which it had concluded with the Union. In the alternative, the General Counsel contends that, if the Board finds that there was not a complete agreement on June 1, it should still adjudge Respondent to be in violation of Section 8(a)(5) by reason of its alleged refusal to bargain with the Union on and after June 4.

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There was substantial agreement between Palatnik and Colavito as to the course of the negotiations for a contract to replace the one due to expire on July 1. These negotiations began with a meeting early in May between Palatnik and Colavito. At this meeting and a later one, on May 15, the main obstacles to agreement were Palatnik's opposition to Leggio's returning as shop steward and his insistence on a reduction in the existing wage scale, on the ground that Respondent could not compete with other area firms under that wage scale. When they met again, on May 21, Palatnik announced that he was expecting some work within a few weeks, at which time he would recall some of the men, but he remained adamant with regard to Leggio. Finally, as a concession to Respondent, Colavito proposed that the Union grant Palatnik an extension of the current contract, pending negotiation of a new contract with other area employers in the industry, with the stipulation that Respondent would adopt any new agreement reached with such employers, and that the Union would not strike Respondent during such negotiations, unless Respondent accepted struck work from another shop. The advantage of this proposal to Respondent was that it would be exempt from any strike that might be called in connection with the foregoing area-wide negotiations. When Palatnik indicated interest in this proposal, Colavito began to reduce it to writing, but Palatnik insisted that the drafting of language be handled by counsel. According to Colavito, Palatnik declared that whatever counsel agreed on would be acceptable to him. Colavito had a contract drafted by Union counsel, Mrs. Harper, who reported to him that she had submitted the draft to Respondent's attorney, Guazzo, and that he had indicated approval and had promised to recommend acceptance thereof to his client. However, when he received the draft in the mail, Colavito was not satisfied with the language of the "struck work" clause, and requested Mrs. Harper to make a change therein and clear it with Guazzo. 12/ On June 1, Colavito presented the final draft to Palatnik, who indicated that it was acceptable to him but that he wished to call Guazzo. After a telephone conversation with Guazzo, Palatnik reported that he was to meet with Guazzo on June 5. When Colavito asked why such a meeting was necessary, in view of the fact that Guazzo had already evinced his approval to Mrs. Harper and Palatnik had just indicated his own satisfaction with the draft, Palatnik answered only that he did not know and suggested that

12/ From a comparison of the initial draft and the subsequent one, it appears that the change desired by Colavito was the inclusion in the "struck-work" clause of a requirement that, in case of a strike by Respondent's employees because of its acceptance of work from a struck employer, Respondent would reimburse the employees for any wages lost as a result of their strike. Similar provisions appeared in the expiring contract, wherever it authorizes strike action to protest specified conduct by Respondent. It is thus clear that there was nothing novel about such reimbursement provision, and that it was one routinely included by the parties in clauses dealing with authorized strikes.

Colavito speak to Guazzo. Colavito promptly called him and asked for the reason for the proposed meeting, asserting that Mrs. Harper had reported that Guazzo was satisfied with the draft, whereupon Guazzo answered, "That's right," but, nevertheless, insisted on meeting with his client. Despite repeated questioning by Colavito, Guazzo offered no explanation, and it was finally arranged that the parties would meet with Guazzo on June 5. According to Colavito, Palatnik concluded the June 1 meeting with the assurance, " . . . don't worry, we got an agreement." 13/

Palatnik denied that he gave the foregoing reassurance to Colavito on June 1. As for the May 21 incident, Palatnik insisted that he merely told Colavito to put his contract proposal in writing and he would have Guazzo look at it, and that he advised Colavito that he could make no commitment without first having discussed with Guazzo the long-range implications of that proposal. There is thus a conflict between Colavito and Palatnik as to whether on May 21, Respondent accepted the proposal for an interim contract, subject only to agreement on appropriate language, or whether Palatnik stipulated that, before signing any such contract, he would have to discuss the merits thereof with Guazzo.

As to his telephone conversation with Guazzo on June 1, Palatnik testified that he asked Guazzo whether he had cleared the new draft and that he professed to have seen only the old one, and proposed a meeting to discuss the new one. However, Palatnik did not dispute Colavito's testimony that on June 1, when he asked why a meeting with Guazzo was necessary, Palatnik answered that he did not know; nor, did Guazzo deny that, when Colavito taxed him with having already indicated approval of the proposed contract, he acknowledged that such was indeed the case but offered no explanation to Colavito for his scheduled meeting with Palatnik. If the reason for that meeting was, as Palatnik testified, his desire to consult Guazzo about the merits of the Union's proposal, it seems that it would have been a simple matter for either Palatnik or Guazzo to have so apprised Colavito. The fact that they failed to disclose any such reason to him at the time but, instead, parried his insistent demands for an explanation with vague and equivocal responses is persuasive that at that time they recognized that Respondent had no valid reason for refusing to execute the contract nor any reason that they could afford to disclose.

In view of these circumstances, as well as demeanor considerations, Colavito's testimony is credited insofar as it conflicts with Palatnik's, and it is found that on May 21, Palatnik undertook to sign a contract embodying the terms then proposed by Colavito, subject to agreement by the parties' counsel on appropriate language; that by June 1, counsel had agreed on such language; and that on that date

13/ All the findings made in the preceding paragraph are based on Colavito's testimony, which was not disputed except in the two respects noted in the next paragraph.

Palatnik reviewed the draft prepared by counsel and acknowledged that it reflected the understanding reached by the parties on May 21, but refused to sign it at that time, proposing instead, a meeting with his counsel on June 5.

As to subsequent events, the record shows that on June 5, Colavito was notified of cancellation of the scheduled meeting and on June 6, he was informed by Palatnik that he was upset by an incident that had occurred on June 2, involving alleged surveillance of Respondent's operations by Leggio, and Palatnik insisted that he would not sign any contract until the Union got rid of Leggio. On June 28, when the matter was next discussed by the parties, Palatnik, at first, reiterated his refusal to sign a contract, unless the Union ousted Leggio as shop steward, but, when the Union indicated its willingness to consider a change in shop stewards, if he would accept the proposed contract, Palatnik declared he still would not sign the contract because of the high wage scale. On July 16, after the other area employers in the industry had reached agreement on the terms of a new contract and Colavito again appealed to Palatnik to sign the contract, he answered that he preferred the existing situation. There have been no further discussions of the contract.

Respondent contends that, even if there was an agreement reached on the terms proposed by the Union, it was not legally binding because it was too vague and indefinite. Respondent relies on the fact that the Union's proposal did not, itself, specify the wage rates and other terms that would apply to Respondent after the Union reached an accord with the other, area employers, but provided only that Respondent would be bound by whatever terms and conditions were negotiated with such other employers.

The clearest expression of the Board's position on that point is contained in the General Sheet Metal case. 14/ There, an employer had executed an "interim agreement," stipulating that it would be superseded by whatever contract was negotiated by the union with a multi-employer association, of which the employer was not a member. However, after such contract was negotiated, the employer refused to comply with the requirement therein for contributions to a fund to be used to promote the interests of his industry. In alleging that the union's insistence on compliance by the employer with that provision was unlawful, the General Counsel relied on Board ruling that the establishment of such a fund was not a mandatory subject for bargaining and a union's insistence thereon violated Section 8(b)(3) of the Act. However, the Board affirmed the Trial Examiner's dismissal of the complaint, which dismissal was predicated on the rationale that the employer's agreement to be governed by whatever terms might be negotiated in the future by the multi-employer association was legally binding, so that, in insisting on the employer's contributing to the industry fund, the union was merely demanding that he honor a valid, contractual commitment. With respect to the contention that the interim agreement was void for uncertainty, the Trial Examiner quoted the following:

14/ 144 NLRB 773.

> It is not necessary that a promise should within itself be certain if it contains a reference to some document, transaction, or other extrinsic facts from which the meaning may be made clear . . . . An offer or agreement may also refer to another agreement for a definition of terms, even to a contract to be made subsequently. 15/

The foregoing ruling is deemed to be controlling here, and it is therefore found that the instant, extension agreement was not void for uncertainty.

Upon consideration of all the foregoing matters, it is found that by June 1, the parties had reached agreement on the terms of an interim contract but Respondent refused on and after that date to execute a contract embodying those terms, thereby violating Section 8(a)(5) and (1). 16/

Conclusions of Law

1. The following unit is appropriate for collective bargaining:

> All production and maintenance employees and plant clericals of Respondent, employed at its plant, excluding office clericals, watchmen, guards and supervisors as defined in the Act.

2. At all times material herein, the Union has been the statutory representative of the employees in the above unit.

3. Respondent has violated Section 8(a)(5) and (1) of the Act by refusing on and after June 1, 1973, to sign a document embodying the agreement of the parties.

4. Respondent has violated Section 8(a)(3) and (1) of the Act by discriminating against employees because of the insistence of their shop steward on strict enforcement of the provisions of the Union's contract, and it has violated Section 8(a)(1) by offering an employee an inducement to abandon the Union.

5. The foregoing violations are unfair labor practices affecting commerce within the meaning of the Act.

The Remedy

It having been found that Respondent violated Section 8(a)(1), (3) and (5), it will be recommended that it be required to cease and desist therefrom and take appropriate, affirmative action.

15/ Williston on Contracts (3rd ed.), sec. 47.

16/ In view of this finding, there is no need to pass on the General Counsel's alternative contention that Respondent has refused to bargain since June 4.

With regard to the 8(a)(5) violation, it will be recommended that Respondent be ordered to execute the draft agreement submitted on June 1, and give it retroactive effect to July 1, making its employees whole for any loss of wages or other benefits suffered as a result of its failure to sign the agreement, together with interest at the rate of 6 percent per annum. 17/

With regard to the layoff of February 15, and the subsequent "discharge" of the laid-off employees, while it has been found that after the termination of the strike Respondent would have recalled six or seven of those employees but for its opposition to Leggio as shop steward, and that the refusal to recall them for such a reason was unlawful, the present record does not permit a determination of the exact number or identity of such employees. That issue will therefore have to be relegated to the compliance stage of this case, as will the issue of the amount of backpay due such employees. Interest at the rate of 6 percent per annum will be added to any such backpay (Isis Plumbing & Heating Co., 138 NLRB 716), and the formula stated in F. W. Woolworth Company, 90 NLRB 289, shall govern the computation thereof. No backpay shall be awarded to any employee for such time as he participated in the strikes that began on February 15 and July 1. 18/

Upon the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the Act, there is hereby issued the following recommended: 19/

17/ Mor Paskesz, 171 NLRB 116, enf'd 405 F. 2d 1201 (C.A. 2); Shamrock Systems, Inc., 155 NLRB 1121.

18/ With respect to the February 15 strike, no backpay is due until February 21, when the Union notified Respondent of the conclusion of the strike and, in effect, requested reinstatement of as many employees as Respondent needed at that time. With respect to the July 1 strike, it is necessary to consider what effect to give to the fact that the employees were discriminatorily terminated before that strike began. Had it been caused by such discrimination, the loss of wages during the strike would necessarily have been attributable to Respondent's discriminatory conduct and would, therefore, properly enter into the computation of backpay. However, that strike was admittedly called only to protest Respondent's refusal to sign a contract and it is inferrable therefrom that the employees would have struck, even if there had been no discriminatory terminations. Under those circumstances, the loss of wages during the period of the July 1 strike may not be imputed to such terminations but to a supervening factor -- the Respondent's refusal to sign a new contract.

19/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondent, Kevin Steel Products, Inc., West Haverstraw, New York, its officers, agents, successors and assigns, shall:

1. Cease and desist:

(a) Discriminating against employees because of their insistence, or the insistence of their representative, on strict enforcement of the provisions of a collective bargaining contract covering the following unit:

All production and maintenance employees and plant clericals employed in Respondent's plant, excluding office clericals, watchmen, guards and supervisors as defined in the Act.

(b) Offering employees inducements to defect from the Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, or any other union.

(c) Refusing to bargain in good faith with the afore-named Union as the representative of the employees in the unit described above, by refusing, upon request, to sign the contract submitted by said union on June 1, 1973. 20/

(d) In any other manner, interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join or assist the above-named Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective-bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent permitted by the proviso to Section 8(a)(3) of the Act.

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act:

(a) Upon request by the afore-named Union, execute the contract submitted by it on June 1, 1973, and give retroactive effect thereto from July 1, 1973.

(b) In the manner and to the extent prescribed in the "Remedy" section of the Administrative Law Judge's Decision, make employees whole for any loss of earnings suffered as a result of Respondent's discrimination against them, and offer them immediate reinstatement to their former jobs, or, if they no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges.

20/ See American Needle & Novelty Co., et al., 206 NLRB No. 61, at page 6 of slip opinion.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this Order.

(d) Post at its place of business in West Haverstraw, New York, copies of the notice attached hereto marked "Appendix." 21/ Copies of said notice, on forms to be provided by the Regional Director for Region 2, shall, after being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof and maintained by it for a period of at least 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated at Washington, D. C. NOV 21 1973

Sidney Sherman
Administrative Law Judge

21/ In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

EXHIBIT - APPENDIX TO DECISION OF ADMINISTRATIVE LAW JUDGE OF NATIONAL LABOR RELATIONS BOARD - ANNEXED TO PETITION

FORM NLRB-4727 (9-69)

APPENDIX JD-703-73

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Act gives all employees these rights:

To engage in self-organization
To form, join or help unions
To bargain collectively through a representative of their own choosing
To act together for collective bargaining or other mutual aid or protection; and
To refrain from any or all these things.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT discriminate against employees by laying them off or discharging them because they or their representatives insist on strict compliance by us with the terms of our contract with SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, or any other union.

WE WILL NOT offer employees inducements to abandon the above-named union or any other union.

WE WILL, upon request, sign the contract submitted to us on June 1, 1973, by the above-named union on behalf of the employees in the following unit:

All production and maintenance employees and plant clericals employed in our shop, excluding office clericals, watchmen, guards and supervisors as defined in the Act.

WE WILL offer reinstatement to their former or substantially equivalent positions to all employees whom we have refused to recall, or whom we have terminated, because of the insistence of their representatives on strict enforcement of our contract with the above-named union, and we will make such employees whole for any loss of wages suffered as a result of our discrimination against them.

All our employees are free to join or not to join Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

KEVIN STEEL PRODUCTS, INC.

Dated _____ By _____ _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York, N.Y. 10007 (Tel. No. 212 - 264-0330).

AFFIDAVIT OF WILLIAM COLAVITO
IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Bankruptcy No.
73 B 909

[SAME TITLE]

AFFIDAVIT IN OPPOSITION TO MOTION FOR ORDER PERMITTING DEBTOR TO CANCEL AND REJECT UN-EXPIRED PORTION OF COLLECTIVE BARGAINING AGREEMENT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM COLAVITO, being duly sworn, deposes and says:

I am the President of Shopmen's Local Union #455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO (hereinafter "Union" or "Local 455"). I submit this affidavit in opposition to the application by the Debtor, Kevin Steel Products, Inc. (hereinafter sometimes "Kevin" or "the Employer") for an order permitting the Debtor to cancel and reject the unexpired portion of its collective bargaining agreement with the Union. I am fully familiar with the facts hereinafter set forth.

The facts reveal that Employer's application is without merit and is not made in good faith. It has

set forth no figures demonstrating that its labor expenses under its contract were out of proportion to its volume of business or other expenses. It has submitted no facts or reorganization plan providing for a fair prospect of profit on the basis of its application, and indeed, examination of the facts reveal that its proposal could have no such result. Granting of the relief prayed for could only give the Employer an unwarranted advantage over its competitors, with unfair and improper results. Moreover, it would effectually reverse the decision rendered against Kevin on November 21, 1973 in a proceeding before the National Labor Relations Board, wherein Administrative Law Judge Sidney Sherman found that the Employer engaged in a series of unlawful labor practices, including, among other things, discrimination against its employees because of their lawful union activities, and an improper attempt to rid itself of the collective bargaining agreement entered into with the Union. Having lost in that proceeding, the Employer seeks to invoke the assistance of this Court to accomplish its wrongful

purpose. An accommodation of the two laws, particularly on the facts here, should permit of no such result.

Kevin is engaged in the fabrication and erection of structural, miscellaneous and ornamental iron work used in building construction. Local 455 represents the Employer's production and maintenance employees in the fabrication end of its operation. Kevin apparently seeks no relief with reference to the rates paid to employees engaged in its erection work, although the cost of wages and benefits paid for those employees far exceeds the cost paid under its contract with Local 455.

The parties have been in contractual relations since 1967. At the time of the execution of their initial contract, there were only six employees in their fabrication unit. Kevin has since expanded its operations, so that in the last year or two, it has at periods employed as many as 30 employees.

The contract between the parties is and always has been a standard one, that is, it is virtually identical to roughly 200 other contracts covering employees engaged in the fabrication of structural, miscellaneous and ornamental iron work.

The reason that such contracts contain basically the same economic conditions, is that the employers concerned are generally competitive in bidding for work and they are in the same labor market. Thus, although Kevin's plant is located in Rockland county, its erection work is not limited to that area. Indeed, one of its most recent large jobs was erected in New Jersey (where rates are roughly the same as in New York). Thus it has competed with shops under contract with the Union.

The employees in Kevin and all Local 455 shops, fall into three major classifications, and most are highly skilled. Indeed, Kevin has complained in the past that its production was inadequate because its employees were not sufficiently productive or skilled. The most highly skilled classification is that of finisher or layout man. There is, unfortunately, a scarcity of such employees in the field and employers vie with each other for their services. Hence, most employers pay more than the minimum rate provided in the contract, of $6.90 per hour, in their desire to retain capable finishers. It is ludicrous for the Employer herein to talk in terms of paying any

such employee as low as $3.50 per hour, or any less than the $6.90 provided in the parties' contract. It would, under such circumstances, be unable to secure the services of any competent employee and its operations would perforce suffer.

A similar problem would be encountered in securing reasonably competent machanics [sic], the classification of employees most numerous in Kevin and in any fabrication operation. These employees perform a wide variety of operations, such as welding, punching, shearing, etc. The minimum contractual rate for such employees is $6.25 per hour. Again, it would be impossible, as the Employer is well aware, to secure the services of a competent mechanic for anything approaching the suggested rate of $3.50 per hour. The Employer has, in fact, not paid a rate as low as $3.50 for a mechanic or finisher in the last six years. Moreover, it should be borne in mind that in a comparatively small shop, such as Kevin, the Employer can only operate efficiently and economically if its mechanics are able to perform a wide variety of functions, rather than be limited to a single

operation, as is often the case in a large establishment where employees have more clearly defined functions.

The third classification of employee is the helper. While these employees are not as highly skilled as a layout man or mechanic, it is important that they know how to handle large heavy beams and other iron and steel. A transient employee who has no training in the field can be a source of accidents and disruption in any fabrication operation.

Kevin affirms in its application that its employees are paid $9.00 per hour and that this figure is out of line. Actually, as shown above, this is not the contractual wage rate provided for in the parties' contract. However, the contract does make provision for payment of pension and welfare (hospitalization, etc.) benefits, for vacations and severence pay, etc. These are all effectuated by Employer contributions to pooled industry funds. Thus Kevin's employees have been earning credit towards their pensions during the entire period of their employment with it, as well as their employment in other Local 455 shops. Is the Employer here

seriously suggesting that it discontinue pension contributions and deprive its employees of their most valued earned employment benefit, in order to subsidize the Employer's reorganization? Surely, this would be inequitable and render impossible a stable employment relationship. Similar considerations are involved concerning contributions to the Welfare Fund, particularly in light of the high costs of hospital and medical treatment today. Can the Employer equitably urge that its employees work without vacation benefits? Indeed, by contributing to the industry's Vacation Fund, as provided in the parties' contract, the Employer may pay less in vacation monies than it otherwise would if it hired experienced help.

It is to be remembered that the Employer is obliged, under the Administrative Judge's decision referred to above, to recall its employees, who were illegally terminated by it. The Employer does not suggest that it has a right to ask this Court to set aside that legal obligation. Can it reasonably be argued that these employees would and should give up all benefits provided for in their contract and

continue to work for this Employer's benefit? The result in the shop would be chaos, or the employees would quit, a result which is the true aim of Kevin's application here.

Were these contractual benefits cancelled, and its present employees quit, the Employer would have equal difficulty in securing new skilled employees, and it would be virtually impossible for it to maintain an efficient productive, stable work force capable of sustaining a profitable enterprise. Nor has the Employer shown any overall figures which would demonstrate that the wages and benefits paid under its contract are out of line and in fact the source of its present financial difficulties.

Certainly there is no reason suggested to cancel other provisions of the parties' contract providing for union security and other benefits. It is certainly obliged to deal with the Union as the representative of its employees. Every Employer is subject to the laws of the land, and thus, a person seeking reorganization of its business cannot operate outside the mandates of the Labor Management Relations Act. Counsel advises me that no such

exception is required in order to effectuate an accommodation between the federal labor laws and the Bankruptcy Laws. The objective clearly sought by the Employer here, is to use this proceeding for reorganization, to rid itself of its obligations to its employees and the Union. Its unlawful activities and aims are made clear by a reading of the decision of the Administrative Judge in the National Labor Relations Board proceeding, a copy of which is annexed to the Employer's application, as well as the inequitable, unworkable relief requested.

It is urged, therefore, that Kevin's application be denied in all respects. It is respectfully suggested that in no event should any consideration thereof be had without a full hearing on the merits, giving the Union a right to be heard, and also affording a representative of the Allied Building Metals, Inc. which represents approximately 70 employers in the field, an equal opportunity to be heard on behalf of its members who would also be unfairly and adversely affected by the granting of the application herein.

[Duly sworn to January 29, 1974.]

s/ William Colavito

OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD TO DEBTOR'S PETITION FOR REJECTION OF THE COLLECTIVE BARGAINING AGREEMENT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF :

KEVIN STEEL PRODUCTS, INC., : IN BANKRUPTCY NO. 73 B 909

Debtor. :

OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD TO DEBTOR'S PETITION FOR REJECTION OF THE COLLECTIVE BARGAINING AGREEMENT

To the Honorable Howard Schwartzberg, Referee in Bankruptcy, United States District Court for the Southern District of New York:

The National Labor Relations Board opposes Debtor's petition for cancellation and rejection of the unexpired portion of its executory collective bargaining agreement with Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO and states as follows:

1. A complaint charging the Debtor herein with violations of Sections 8(a)(1), (3), and (5) of the National Labor Relations Act (29 U.S.C. Sec. 158(a)(1), (3) and (5) issued on July 31, 1973. Thereafter, on September 13, 1973, the Debtor filed for an arrangement pursuant to Chapter 11 of the Bankruptcy Act (11 U.S.C.Sec. 701 et seq.). In a

decision dated November 21, 1973, an Administrative Law Judge of the National Labor Relations Board found, in part, that the Debtor had refused to bargain with the Union by refusing to sign the contract submitted by said Union on June 1, 1973 and ordered that the Debtor execute such contract and give retroactive effect thereto from July 1, 1973.[1/]

The Debtor now petitions the Referee in Bankruptcy for cancellation and rejection of the unexpired portion of this collective bargaining agreement.

2. The Bankrupcy Act accords the Referee in Bankruptcy the power to permit the rejection of executory contracts of the debtor in arrangements under Chapter 11 (11 U.S.C. Sec. 713). The courts in those few cases in which the issues was squarely presented, have held that a collective bargaining agreement can be rejected like any other executory agreement. Carpenters Local Union 2746 v. Turney Wood Products, Inc., 289 F. Supp. 143, 149 (W.D. Ark.,

1/ The 1973 collective bargaining agreement extends a previous contract effective from July 1, 1970 to June 30, 1973 with several modifications.

1968); In Re Klaber Bros., 173 F. Supp. 83, 84 (S.D.N.Y., 1959). See also, In Re Mamie Conti Gowns, 12 F. Supp. 478, 480 (S.D.N.Y.,1935).

3. However, any order allowing the rejection by a debtor of a collective bargaining agreement to advance the policies of the Bankruptcy Act necessarily conflicts with the concurrent and equally important federal policy of encouraging the creation and enforcement of collective bargaining agreements. As the court in Turney Wood Products, supra at 148, noted:

> [F]ederal labor policy, expressed in both statues and judicial decisions, strongly favors collective bargaining and the specific enforcement of collective bargaining agreements.

Accrodingly, the Bankruptcy Court should follow the mandate of In Re Overseas National Airways, Inc., 238 F. Supp. 359, 361-362 (E.D.N.Y., 1965) that

> when it has the power to reject a collective bargaining agreement, [it] should do so only after thorough scrutiny, and a careful balancing of the equities on both sides, for, in relieving a debtor from its obligations under a collective bargaining agreement, it may be depriving the employees affected of their seniority, welfare and pension

> rights, as well as other valuable benefits . . . . That would leave the employees without compensation for their losses, at the same time enabling the debtor, at the expense of the employees, to consummate what may be a more favorable plan of arrangement with its other creditors. 2/

4. The Bankrupt's petition alleges that the unexpired portion of the collective bargaining agreement should be rejected because salaries and benefits, totalling $9.00 per hour, due its employees under the contract make it "economically impossible for petitioner to present any plan to the creditors that could have any reasonable chance of success, and be accepted by said creditors." In the view of the Board, if the Referee in Bankruptcy determines that the terms of the collective bargaining agreement referred to in the bankrupt's petition do, in fact, make the successful operation of an arrangement

2/ An example of this "balancing of the equities" is In Re Mamie Conti Gowns, supra at 480, where the court held that its power to set aside labor contracts should not be exercised where the debtor's purpose in the bankruptcy proceeding is to avoid the collective bargaining agreement.

impossible,[3/] the Referee should set aside only those unduly burdensome terms of the contract. Those portions of the collective bargaining agreement which do not interfere with a successful arrangement under Chapter 11, i.e. union security and arbitration provisions, should be left intact. Under settled principles, obligations under the National Labor Relations Act continue during bankruptcy, including the obligation of the bankrupt to bargain with the statutory representative of the employees for a new contract. N.L.R.B. v. Baldwin Locomotive Works, 128 F. 2d 38, 43-44 (C.A. 3, 1944); N.L.R.B. v. Bachelder, 120 F. 2d 574, 576-578 (C.A. 7, 1941); Carpenters Local Union 2746 v. Turney Wood Products, Inc., 289 F. Supp. 143, 148; In Re American Buslines, Inc., 151 F. Supp. 877, 882-887 (D.C. Neb., 1957). It would unnecessarily impair the employees' statutory collective bargaining rights in this case to require the renegotiation of those portions of the present

3/ A determination that the benefits accorded the employees under the contract impede the success of an arrangement requires a finding that the bankrupt can employ workers for substantially less benefits in the absence of those contract provisions.

collective bargaining agreement which pose no obstacle to the successful arrangement of the bankrupt and the effectuation of the policies of the Bankruptcy Act.[4/] Selective rejection of severable portions of the labor contract, in lieu of total rejection, would advance the bankrupt's need to rearrange its business while simultaneously affording "some protection to the employees from a sudden change in the employment relationship." John Wiley & Sons v. Livingston, 376 U.S. 543, 549 (1963).

5. In Re Klaber Bros., 173 F. Supp. 83 (S.D.N.Y., 1959), which upheld the Referee's determination that the collective bargaining agreement involved therein should be set aside in toto, should not be determinative here. Klaber relied solely upon a statement in 8 Collier on Bankruptcy (14th Ed., 1971), par. 3.15[7], p. 228:

4/ See John Wiley & Sons v. Livingston, 376 U.S. 543 (1964), as support for the proposition that the bankrupt can be bound to some provisions of a labor contract despite the rejection of others.

OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD TO DEBTOR'S PETITION FOR REJECTION OF THE COLLECTIVE BARGAINING AGREEMENT

> An executory contract cannot be rejected in part, and assumed in part. The debtor, or the trustee, is not free to retain the favorable features of the contract, and reject only the unfavorable ones. Assumption carries with it all of the burdens as well as the benefits of the contract. The contract must be rejected in its entirety or not at all.

This statement is based upon the Supreme Court's decision in Hurley v. Atchison, Topeka & Santa Fe Ry., 213 U.S. 126 (1909), which held that a trustee in bankruptcy electing to assume the benefits of a contract takes it subject to corresponding provisions and conditions unfavorable to him but favorable to the other parties to the contract. See also, York Manufacturing Co. v. Cassell, 201 U.S. 344 (1906); 4A Collier on Bankruptcy, par. 70.43[1], p. 519 and cases cited at p. 519 n. 5. The irrelevance of this principle to a case involving the rejection of some provisions of a collective bargaining agreement by a Referee in Bankruptcy for the benefit of the bankrupt and the retention of other provisions for the benefit of employees is apparent.

6. Furthermore, Klaber incorrectly treats the rejection of a collective bargaining agreement as

involving no different considerations than a contract outside the sphere of labor-management relations. "[A] collective bargaining agreement is not an ordinary contract." John Wiley & Sons v. Livingston, supra at 550. In view of the importance of national labor policy as expressed in the National Labor Relations Act, "technical rules of contracts do not necessarily control all decisions in labor management cases." F.W. Means & Company v. N.L.R.B., 377 F. 2d 683, 686 (C.A. 7, 1967) citing Lozano Enterprises v. N.L.R.B., 327 F. 2d 814 (C.A. 9, 1964).

7. In sum, the Referee in Bankruptcy should consider the rights of the bankrupt's employees in ruling on the petition for rejection of the collective bargaining agreement. Given the "overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction" (Bank of Marin v. England, 385 U.S. 99, 103 (1966)), we submit that the Referee in Bankruptcy should set aside the collective bargaining agreement only insofar as actually necessary for the successful arrangement of the bankrupt petitioner.

OPPOSITION OF THE NATIONAL LABOR RELATIONS BOARD TO DEBTOR'S PETITION FOR REJECTION OF THE COLLECTIVE BARGAINING AGREEMENT

WHEREFORE, the Board respectfully requests that the petition for rejection of the collective bargaining agreement be denied.

Respectfully submitted,

Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board

By s/ Abigail Cooley
ABIGAIL COOLEY, Assistant General Counsel for Special Litigation
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570
Telephone: (202) 254-9221

Co-counsel: Sandra McCandless (Ext. 9305)

Dated at Washington, D.C.
this 28th day of January, 1974.

MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR LEAVE TO WITHDRAW WITHOUT PREJUDICE

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF	:	
	:	IN BANKRUPTCY NO. 73 B 909
KEVIN STEEL PRODUCTS, INC.,	:	

MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR LEAVE TO WITHDRAW WITHOUT PREJUDICE

To the Honorable Howard Schwartzberg, Referee in Bankrupcy, United States District Court for the Southern District of New York:

The National Labor Relations Board, by its Assistant General Counsel for Special Litigation, respectfully moves this Court for leave to withdraw its Opposition to Debtor's Petition for Rejection of the Collective Bargaining Agreement previously filed herein. In support thereof, the Board shows as follows:

1. On January 28, 1974, the Board submitted an Opposition to the Debtor's Petition for Rejection of the Collective Bargaining Agreement.

2. Upon further consideration, the Board has determined that an expression of its position on the issues involved herein is inappropriate at this time.

3. Accordingly, the Board seeks leave to withdraw its appearance herein without prejudice to

its right to take a position upon the legal issues involved in the Debtor's petition in a later stage of this proceeding.

WHEREFORE, the Board respectfully prays that its motion be granted and that the Opposition to Debtor's Petition for Rejections of the Collective Bargaining Agreement be withdrawn without prejudice.

Respectfully submitted,

Elliott Moore
Deputy Associate
General Counsel
National Labor Relations
Board

By s/ Abigail Cooley
ABIGAIL COOLEY, Assistant
General Counsel for
Special Litigation
1717 Pennsylvania Ave., N.W.
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Co-counsel: Sandra McCandless
(Ext. 9305)

- and -

Winifred D. Morio, Regional
Attorney
Region 2, N.L.R.B.
36th Floor Federal Bldg.
26 Federal Plaza
New York, New York 10007

Dated at Washington, D.C.
this 19th day of February, 1974.

ORDER OF BANKRUPTCY JUDGE
REQUIRING EVIDENTIARY HEARING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

In Proceedings for
an Arrangement
No. 73 B 909

The debtor's application to reject the unexpired portion of an executory collective bargaining agreement cannot be decided solely upon affidavits and argument of counsel. This court will require a full hearing and submission of evidence with respect to the issue of whether the contract in question poses an obstacle to the successful arrangement of the debtor. Accordingly, the matter is set down for hearing on February 21, 1974 at 11:30 A.M. If any party believes that other parties may have an interest in this proceeding such party is at liberty to apprise the other parties of the aforesaid date.

Dated: Yonkers, New York
February 11, 1974

s/ Howard Schwartzberg
Bankruptcy Judge.

To: Guazzo, Silagi &
Craner, P.C.
Attorneys for Debtor
888 Seventh Avenue
New York, New York 10019

Sipser, Weinstock, Harper & Dorn, Esqs.
Attorneys for Shopmen's Local Union No. 455
380 Madison Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

KEVIN STEEL PRODUCTS INC.,

Debtor

No. 73 B 909

30 South Broadway
Yonkers, New York

February 21, 1974

HEARING RE: REJECTION OF CONTRACT (LOCAL 455)

B E F O R E:

HON. HOWARD SCHWARTZBERG,

Referee In Bankruptcy

Adjourned to March 22, 1974 at 10:00 o'clock A.M.

RAYVID REPORTING SERVICE
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NEW YORK, N. Y. 10038
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A P P E A R A N C E S:

MESSRS. GUAZZO, SILAGI & CRANER
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888 Seventh Avenue
New York, New York
BY: MITCHEL CRANER, ESQ., Of Counsel

MESSRS. SIPSER, WEINSTOCK, HARPER & DORN
Attorneys for Local 455
380 Madison Avenue
New York, New York
BY: DONALD E. KLEIN, ESQ., Of Counsel

- - - - - - - -

P R O C E E D I N G S

MR. KLEIN: May it please the Court, the Affidavit which I have submitted to Your Honor in support of the Application for Adjournment was fully true and correct as of five o'clock yesterday afternoon.

At five o'clock my own engagement this morning was adjourned because of the matters we have been reading in the newspaper regarding a possible settlement of the Rheingold litigation.

We thought it was best to adjourn those matters.

However, while I physically can

be here this morning, I have not had ample opportunity between five o'clock yesterday afternoon and today to mechanically get together, assemble the people whom I want to be with me when I cross examine the Debtor's witnesses and to testify on behalf of the union in opposition to this.

Our request for an adjournment is not made for purposes of delay. It is made in good faith.

It is only for a short period of time to February 27th.

I advised Mr. Craner of the office of the Attorneys' for the Debtor of this orally last week, Wednesday or Thursday.

As stated in the Affidavit, he could not agree, but we have had matters which are really beyond our control intervene and I regret that I am just not able to proceed this morning before you.

MR. CRANER: We respectfully oppose any Application for an Adjournment.

This matter was set down for a hearing this morning by Order of the Court on February 11, 1974.

This is a critical Application and Motion by the Debtor.

The timing is of such that an adjournment at this time would be highly prejudicial and perhaps disasterous.

Just lastweek there was a Motion before you on this very case in which a secured creditor was moving to reclaim certain assets.

We told in open Court that this Motion was to be heard today, the said creditor adjourned his Motion pending the outcome and determination of the Motion before the Court today.

I appreciate the fact that Counsel is busy. However, this matter was set down on the 11th.

There is no reason why Counsel's witnesses couldn't have been here today, just as he is here today.

I understand that the Rheingold case is a case in which you get your name in the papers, it's important. But to Kevin Steel this is important, too.

We are ready to proceed today and I can't foresee next week, Mr. Palatnik is going to be out of the country.

The President of the Debtor will be out of the country, he is my witness. Just as Counsel says he needs his witnesses to help cross examine Mr. Palatnik, I can't proceed without Mr. Palatnik.

Next Wednesday I expect to select a jury in the State Court - - next Tuesday. I won't be available to be here on the adjourned matter.

What we are talking about is putting this into March. We have an adjourned first meeting of creditors in which we received what appears to be a pretty hostile letter from the creditors.

They want to know what's happening. We have a very valuable piece of equipment

which the Debtor leases and has not been able to pay on the lease because of financial crisis here.

There is a chance that this piece of equipment which is leased to the Debtor is lost and there is litigation on that.

In order to juggle this thing pending this hearing, I will be able to put that matter off and try to urge the litigating parties just to abide by today's decision.

I see no reason at all why we can't proceed today.

Normally, I would accommodate Counsel. In fact, the first time this Motion was ever on the Attorney for the Union called and said they were busy, "Could we adjourn it?" and we certainly agreed to it.

But we are passed the point. I would say that this would be not only prejudicial but disasterous.

I respectfully request in light

of the fact that this hearing has been pending since the 11th of February that you deny and we proceed to a hearing today.

MR. KLEIN: If Your Honor please, the 11th of February has been mentioned five or six times.

That is the date of your Order, we did not receive it until February 13th.

So I cannot accept the fact - -

THE JUDGE: Which was eight days ago.

MR. KLEIN: Eight days ago. Immediately thereafter we advised Counsel of our problems.

MR. CRANER: You knew.

MR. KLEIN: It's just physically impossible for us to proceed this morning.

The issues are important. They involve the relationship of the National Labor Relations Act to the Bankruptcy Act.

I think you will need a full and complete record on it.

The best possible cross examination of the Debtor and the best possible evidence we can produce to render a decision - - I'm sorry, we just are unable to proceed this morning.

We don't make a habit of this and I don't like coming in to Court saying that we have been unable to be adequately prepared for a hearing, but unfortunately, because of circumstances beyond our control, that is the case.

THE JUDGE: Firstly, this does mean a matter of life and death for the Debtor.

I am aware that there are other matters involving this Debtor which depend upon the determination of this Motion, including the submission of a plan and the fact that there was a creditor who had appeared at the last hearing and whose matter was adjourned because of the pendency of this hearing.

Secondly, the burden is on the Debtor to come forward and present evidence with regard to the onerous nature, if it is such, of the executory contract which it seeks to set aside.

I set it down for a hearing simply because while both sides were prepared at the last hearing to allow the matter to be decided based upon the Affidavits and Briefs, I was not satisfied to determine it on Affidavits alone and I wanted the Debtor to come forth and meet its burden of proof with regard to the question of whether or not the contract was onerous.

I have set it down for today and I intend to proceed.

This Court also has a calendar, a schedule and I cannot disrupt this Court's calendar continuously.

Therefore, I am going to direct you to proceed.

MR. KLEIN: If Your Honor please,

I must except.

THE JUDGE: Your exception will be noted.

MR. KLEIN: I just don't know how I can participate in the proceedings this morning.

THE JUDGE: Well, the Debtor will present its proof.

It is the Debtor's obligation to present proof.

The Debtor has the burden, the Debtor can proceed.

MR. KLEIN: May we have an adjournment to present our case?

MR. CRANER: Your Honor, this is doing indirectly what you are directing today.

When this matter was on before this Court, when there was a formal hearing an oral argument was taken, I believe the Court said that if, in fact, a hearing was ordered, that there would be determination by the Court immediately because of the

seriousness of the Application before the Court.

Now, Mr. Palatnik will not be available for me and I will be prejudiced in defending the case.

It's really a balancing of equities. I think under all the circumstances, we have complied with our obligations, we have complied with the directives of this Court and I think any delay would be prejudicial.

THE JUDGE: As a matter of practical expediency, this Court is laboring under the handicap of the fact that I do not have a Court Reporter and will not have a Court Reporter until next March 6th.

Consequently, any adjournment would have to go over for two weeks.

That would, I believe, be disasterous to the Debtor. I believe there is a hearing scheduled for March 6th.

MR. CRANER: March 5th.

THE JUDGE: What is that?

MR. CRANER: That is an adjourned first meeting.

THE JUDGE: So you will proceed now.

MR. KLEIN: I would like a few minutes to call my office.

MR. CRANER: We have no objection.

THE JUDGE: If you wish, I would be willing to put this matter on for after lunch if you can get your witnesses up here after lunch.

MR. CRANER: We would have no objection to that.

THE JUDGE: Why don't you call your office and see what you can do.

Off the record.

(Discussion off the record.)

THE JUDGE: This is the hearing with respect to the Motion on behalf of the Debtor to cancel and reject the unexpired portion of the executory collective bargaining agreement between the Debtor and Shopmen's Local Union 455,

International Association of Bridge, Structural and Ornamental Iron Works A.F.L.-C.I.O.

The matter was set down for today and the Debtor will proceed.

MR. CRANER: We call Mr. Palatnik.

ROBERT PALATNIK, Called as a witness, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY THE JUDGE:

Q What is your full name?

A Robert Palatnik.

Q Where do you live?

A 4 Brian Lane, Spring Valley, New York.

EXAMINATION BY MR. CRANER:

Q Are you an officer of Kevin Steel Products, Inc.?

A Yes, I am.

Q Can you tell us the office you hold?

A I am President.

Q When was Kevin Steel organized?

A Around 1968.

Q Could you tell the Court briefly what is the business of Kevin Steel?

A Kevin Steel is a fabricator of structural members and also an erector.

Q Did there come a time after the organization of Kevin Steel Products, Inc. that Kevin Steel entered into any collective bargaining agreements with any labor organization?

A Yes, we did.

Q Can you tell the Court when and with whom?

A The first one that we were organized was Local 417 of the outside iron workers. That was immediate.

The next one was about six to eight months later, was Local 455 the Shopmen's Local.

Q You had more than one labor organization representing various employees of your organization, is that right?

A Yes, we had three in total.

Q Could you tell the Court pertaining to Local 455, whom did they have organized and were they the collective bargaining agent for?

A They were the collective bargaining agent for the shopmen.

Q Can you tell the Court what shopmen who worked for you did, what kind of work?

A They unloaded trucks, fabricated steel, painted, loaded trucks.

Q Approximately from the time you signed the collective bargaining agreement until sometime in 1973, how many employees of Kevin Steel were under contract with Local 455?

A Oh, approximately twenty.

Q These would be the shopmen, is that right?

A Yes.

Q After you signed your first collective bargaining agreement in approximately 1968, did there come a time when you signed a second agreement, when the first contract expired and you renegotiated and executed a second contract?

A Yes, we did.

Q When would this be, approximately, sir?

A I think that was about two years although - -

that was about two years later, I think.

Q Thereafter your employees to be, your shopmen continued to be organized and represented for collective bargaining reasons by Local 455, is that right?

A That is correct.

Q This is pursuant to a contract?

A That is correct.

Q Pertaining to a time at the beginning of 1973, could you tell the Court approximately under the contract how much the shopmen were paid by Kevin Steel?

A We had an average in the shop of $7.27 per hour.

Q Did that include benefits?

A Yes, it did.

Q And contributions?

A Included.

Q Contributions to various funds pursuant to the collective bargaining agreement?

A Correct.

Q So the entire package would be $7.27?

A Correct.

Q Could you tell this Court what, if anything, the effect of the payments to the shopmen had on your ability to operate business?

MR. KLEIN: I object. I think the question is too broad and too general to be answered.

THE JUDGE: Sustained.

Q Could you tell this Court how you go about getting business or how you were going about getting business in 1973?

How did your business operate and function?

MR. KLEIN: Your Honor, may I ask for a time frame?

THE JUDGE: He just said, 1973.

MR. KLEIN: There are a number of events that occurred during 1973.

As is indicated in the papers and if we can start at the beginning, the middle or the end, I think it would be important.

Q Just that we understand what we are talking about, you testified that the average pay of

your shopmen was $7.27, is that right?

A That is correct.

Q For what period of time are you talking about that you paid at this rate?

A I would say approximately a year and a half.

Q From when?

A Well - -

Q Would that be from September of 1973?

A I got a figure out when they got their raise. Probably around January of '73.

Q So we are talking about the time from January, 1973.

What was their salary prior to January, 1973?

A I would say about 75¢ to $1.00 difference, lower.

Q How long did that lower salary rate stay in existence?

How long was that in existence?

A That existed - - prior to that it was another six months, the prior six months.

Q So that would be approximately June

of 1973 or July of 1972.

What was the wage rate prior to June or July of 1972?

A You would have to come down probably about another 75¢ or $1.00. Each time it was somewhere around there.

I think it was about a $3.25 package that they had.

Q I am talking about the period of 1972 and 1973 up until September of 1973.

During that period of time, can you tell the Court how Kevin Steel obtained business?

What did it do to bring income in?

A What we would have to do is we would have to bid on our work.

We would secure plans from contractors, sit down, take off the work, figure out how much it was going to cost to fabricate and then go out and give the price to the contractor.

Q How long have you been in this field?

A Oh, I would say nineteen years.

Q Have you done all the various aspects of the business in the trade that you have just told

us that Kevin had to do?

Did you do it personally?

A Yes, I have.

Q Approximately how many jobs have you bid on during this period of time, how many jobs have you estimated?

A I would say upwards of 1,000 jobs, 1,500 jobs.

Q Is this the way business is obtained in this industry?

In other words, you are competing?

A Yes, by competitive bidding.

Q Is there a service you render or is it just really a question of price?

A It's a combination, but the biggest is the price, because we are all competitive and we have to bid.

Q In 1972 and 1973, could you tell this Court what your competition was?

THE JUDGE: What or who?

Q What the competition was and who the competition was?

Can you identify whom you were competing

against?

A Yes, most of my work - - I wouldn't say all of it but most of my work consisted of work in the County of Rockland, in the County of Orange.

We did one job out in Roslyn, Long Island, but most of our work was in the upstate area.

In the upstate area we have three or four, five different shops up in that area.

Q Do they compete directly against you on jobs, were they competing against you directly bidding?

A Yes, they were.

Q Can you identify these shops?

A Well, we have one small shop, which is called Rockland County Iron Works, who is a non-union shop.

We have within the last year and a half to two years, we had another shop grow up, which was New Windsor Metal Fabricators.

Q Are they organized by any labor union?

A From what I understand, they are a Teamster Local.

Q Who else were you competing against?

A We have another shop in the area, right in the local area of Rockland County, called Monsey Iron Works, who is a non-union shop.

We have a shop up in Fallsburgh, which is called Fallsburgh Iron and they are a non-union shop.

We have a shop up in Liberty, New York and that is Liberty Iron and also a non-union shop.

Q During this period of time, 1972 to - - up until September, 1973, were there any othe. shops outside the local area with whom you had to bid against?

A Well, yes, there's shops in Pennsylvania that we bid against, there's shops in Massachusetts we bid against, there's - - up in Binghamton, Augusta, Maine, North Carolina.

We bid against a very, very large spectrum of shops.

Q Is it your experience that in this industry, during the time period we are talking about, 1972 to about the middle of 1973, that the

person or the company or the organization that came in with the low bid was going to get the job?

A Very definitely.

Q Could you give a range, an approximate range so the Court will have an understanding, as to how much money is involved in these jobs?

What were the range of the jobs you were bidding?

A We bid anything from $25,000 to $500,000.

Q Could you give the Court an idea on a typical job how much of your expenses that you have to take into account in estimating a job are attributed to labor costs?

A Labor costs are 48%.

Q You have, in response to my question, given us the names of certain competitors and also areas in which you compete against, companies in which you compete against.

Are any of these companies or did any of these companies and are any of these companies now paying less than the average hourly cost, labor cost

that you were paying in 1972, 1973 and would be paying under the collective bargaining agreement in 1974?

A Yes, all the shops that I have mentioned.

Q They are all less than what you pay?

A They are all less than what I pay.

Q Is there any other way in which you can offset the higher wages that you pay in figuring out a job so that you can overcome the economic disadvantage you have in bidding?

A The only other way is that you would have to get the equipment, the sophisticated equipment in order to fabricate the steel at a much quicker rate.

If a man is getting $7.00 an hour and another man is getting $3.00 an hour in a different area or a $4.00 an hour man, we would have to be able to turn out the steel in twice the time or half the time.

Q Did you buy equipment to assist you in trying to be more efficient?

A Yes, I did.

Q Could you tell the Court what you bought and what happened?

A I bought a Thomas Spacing machine.

Q How much did this cost you?

A $75,000 and $10,000 to put it in the ground.

Q Could you tell the Court what this piece of equipment is and what does it do?

A This piece of equipment is a piece of equipment which lays out the steel and punches it in specific areas as determined by drawings.

Q What happened in relation to Local 455 after you purchased this equipment and installed it?

A Well, this was a new piece of equipment. At the time we had nobody to run the piece of equipment.

I wanted to train somebody to run it. Local 455 said that these - - they had in their area people running this machine and that if I wanted to put somebody on the machine, I would have to pay them finisher's wages.

Q What does this mean in layman's

language?

A Well, this means that as far as they were concerned, they were in no position to give me any kind of a break for somebody to learn how to run this machine.

Secondly, instead of a - - you need two men to run the machine.

They wanted to put on a finisher and a mechanic, two of the highest paid people in the shop.

Now, at the time I told them, I said, "Let me break somebody in with this machine, give me time to work it out".

This machine cost a lot of money. I have to take it easy with a guy, let him learn how to use the machine and then when he is in a position to know how to run it, then maybe he deserves the wage rate.

Q Otherwise, what you offered to the union was to have people running this machine who would be paid less than what the union insisted you pay the people to actually run the machine?

A That is correct.

Q Is this, in fact, what happened,

that the union revailed and that you had to put on the costlier workers?

A That is correct.

Q Did this have any effect on the prospective savings in installing this machine?

A Well, there's really no savings on the installation of the machine, it's in the running of the machine.

The efficiency was quite low and I was paying quite high for the inefficiencies of it.

Q This affected your costs?

A Oh, everything affects my costs.

MR. KLEIN: Was it established when this machine was bought and installed?

Q When was the machine bought and installed?

A The machine was bought and installed I would say in 19 - - March of '72, I think, around that area.

Q Did you pay cash for this machine or did you have monthly payments?

A No, I have leased the machine.

Q You have leased the machine?

A Right.

Q Can you tell the Court what the monthly lease on this machine is?

A $1,600.

Q Did there come a time when you had labor problems with Local 455 that resulted in a labor dispute and ultimately a picketing of your premises?

A Yes, I did.

Q Could you tell the Court what was the cause of this labor dispute and what happened?

A Well, I prevailed upon the union at the time the new contract came up - -

Q When was this?

A This was July of - - well, prior to July of 1973. (Continuing) - - that competition was greater because of these new shops that had come up, that I was in an area that was out of the local area of New York City and I, being in an economic area where I should be paying less than what New York City is paying.

I told them that as far as I was concerned, there are two locals, sister locals, there is Local

40 and 417.

Q Do they have a different arrangement between - -

THE JUDGE: Let him finish.

A Local 40 and 417 are sister locals in the erection business.

They have a $2.00 difference between the New York City rate and the five County rate that we more or less did our work.

Q You mean the shops that these sister locals had collective bargaining agreements that were $2.00 more than the comparable work done outside of New York City, is that right?

A Right.

Q Regarding Local 455, were you paying more, less or the same as shops that they had under their jurisdiction in New York City?

A I was paying the same, except for one shop that is up in Poughkeepsie, New York.

Q Which was less than you?

A Less than me, $1.00.

Q This is Poughkeepsie - -

A Poughkeepsie Iron & Metal.

Q That you testified about before, is that right?

A Yes.

Q Could you tell the Court what, if anything, the result of the higher wage rates that you were paying the employees of Local 455 had on your company?

MR. KLEIN: Again, may I ask, what period of time are we talking about?

Q 1972 to September of 1973.

A During this period, we ran into - - the whole industry ran into problems.

The problems were that there wasn't enough work around for everybody.

Q Prior to 1972, had there been more than enough work?

A Up until - - up in the County, yes, there was more than enough work up in the County.

Q What happened?

A With the advent of new shops coming in, with the advent of the difficulty in the economic period during that time, we had other people, other

shops coming into the area and giving prices, not only our own shops.

With other shops and my own shop giving prices, with a Local 455 contract, I could not compete.

I started to lose work. In fact, I lost one job not more than 200 yards away from me, on which I bid on.

I was over their costs and they gave it to New Windsor Metal Fabricators.

Q This is one of the companies you testified has a lower wage scale than you, is that right?

A That is right.

Q Could you tell the Court in 1971, approximately how much business you did?

A Let me just think for a minute.

Q Approximately?

A About $1,200,000.

Q What did you do in 1972?

A I did $1,500,000.

Q In 1973?

A In 1973, that was $1,400,000 something.

Q Did you make a profit in 1971?

A Yes.

Q What was your profit?

A Approximately $17,000.

Q Did you make a profit in 1972?

A Yes, I did.

Q What was your profit then?

A Roughly about $18,000.

Q How about 1973, the first half of 1973?

A The first half of 1973 I lost over $86,000.

THE JUDGE: What was the profit for 1971?

MR. CRANER: $17,000.

Q Is that right?

A Yes, $16,000, $17,000; $16,800 I think it was.

Q Based upon your experience in the industry and your personal knowledge as to conditions, is the competition that you have talked about in 1971 and in 1972 and 1973, is that competition more vigorous now, less vigorous or the same?

A It's more vigorous right at this present

time.

Q Did there come a time when you were picketed by Local 455?

A Yes.

Q When did this commence?

A When I refused to sign the new bargaining agreement.

Q When was this?

A July 1st.

Q This would be the second half of 1973, is that right?

A That is correct.

Q Thereafter, did you have anyone working for you during the picketing?

A Yes, I did.

Q Talking about the period from July until September of 1973 , how many people did you have working for you?

A Four.

THE JUDGE: From July to when?

Q July to September, when you filed the Petition in this proceeding, you had four people working for you, is that right?

A Right, besides myself and a Teamster, which is not in their bargaining unit.

Q Were you under the union contract? Prior to July of 1973, were you allowed to do work in the shop?

A Yes.

Q Do you still employ people in your shop?

A Yes, I do.

Q Are you being picketed at this time?

A At this time there is no pickets in front of the shop.

Q When was the last time you had a picket from Local 455?

A I would say around - - right after I filed Bankruptcy, September 12th or 13th, in there.

Q When you filed under Chapter XI?

A Right.

Q Could you tell this Court the wage rate in which you are paying the people working for you subsequent to July of 1973 up to the present?

A I have four people, they range from $3.50 to $5.85.

Q What is the average wage that you are paying?

A Average would be about $5.25.

Q In July of 1973, what was the average wage you were paying?

A In July?

Q Under the collective bargaining agreement?

A That was $7.27.

Q When Local 455 wanted you to sign another contract, can they - -

THE JUDGE: How much?

THE WITNESS: $7.27.

Q When Local 455 wanted you to sign another contract in July of 1973, did they indicate that the contract would be at the same rate that you had been paying under the expiring collective bargaining agreement, less than that rate or more?

A Well, to date I haven't seen their new contract but through the grapevine I heard that it was more.

Q Do you know of any shops that have signed contracts with Local 455 or in July of 1973

that took a cut in pay, in their new collective bargaining agreement?

A No.

Q In fact, didn't these shops get an increase?

A Yes, they have.

Q The workers that you have working for you, had they previously been members of Local 455?

A Yes, three of them had been.

Q Did they take a cut in pay to work for you?

A Well, at that particular time we were paying them the contract wages.

After July, as far as I know, the union got a - -

THE JUDGE: After July when?

THE WITNESS: July 1st.

THE JUDGE: What year, 1973?

THE WITNESS: 1973.

A (Continuing) - - The other shops got an increase.

We stayed at the same rate.

THE JUDGE: When you say, "Other shops", what other shops?

THE WITNESS: The other shops that are covered under Local 455.

Q Did these workers, in fact, quit the local to work for you?

A Yes, they did, they sent letters in to resign.

Q Starting from the time that you organized your shop until the present, how have you gotten people?

Where have you recruited workers from, what background do they have when they came to you?

A The large majority of workers were workers that we built in our own shop.

We taught them how to weld, how to handle steel. Out of twenty guys that we had in the shop, I would say only about five were actual members prior to us being organized.

Q Were these relatively unskilled workers when you taught them the business, is that right?

A Yes, we have a large Puerto Rican area up

there and we have been employing I would say four or five Puerto Rican's, I would say about two or three colored and the rest Germans and what not.

Whatever was in the area.

Q What was - -

A In fact, the people from Local 455, when we did call that we needed people, they wouldn't travel to me.

They wouldn't travel from the city.

Q You recruited your own workers and taught them the business, is that right?

A So we recruited workers from the area.

Q Are these workers still available? Is this source of labor supply, is that still available in Rockland County?

A Most definitely.

Q If you had to, could you hire and train the people available in Rockland County to work for you?

A Definitely.

MR. KLEIN: I object, first on the ground that it's hypothetical and second on the ground that there

is no testimony by the witness as to how long it has taken him to train the people.

THE JUDGE: Sustained.

Q Did you have any difficulty getting your present employees, the people currently on the payroll, to work for you at the wages which you are paying them?

A No.

Q Less than the wages that you were required or mandated to pay under a Local 455 contract?

A Yes, and if I may give you an example, the one fellow that I brought in at $3.50, as far as I am concerned, does - - had no knowledge of the business prior to coming with us.

Q When did you recruit him?

A He's with us about a month and a half - - no, I'm sorry, three months. His first two weeks in the place, he did more work than one of their local people did.

Q One of the forty-five people?

A Right.

Q Who you were paying on the average of $7.27 on the hour, is that correct?

A That is correct.

Q You hired this person at $3.50 an hour?

A $3.50 an hour.

Q Since July of 1973, when you no longer longer were complying with the provisions of the collective bargaining agreement of Local 455 as to the wage rate, have you bid jobs?

A Repeat that.

Q Since July - -

THE JUDGE: Off the record.

(Discussion off the record.)

Q Since July of 1973, the period in which you no longer paid the wages mandated by Local 455, have you bid on contracts?

A Yes, I have.

Q Have you been successful in obtaining contracts?

A Yes, we have.

Q Have you been able to make a profit on these contracts?

A Yes, we have.

Q Have you been required to pay wages - - Had you been required to pay wages at the rate mandated by Local 455, would you have been able to successfully make a profit on these same contracts?

MR. KLEIN: I object, I don't think - -

THE JUDGE: Sustained.

Q You testified that wages are 48% of your cost in a job.

Now, could you tell the Court whether, if you had to use the wage rate of Local 455, an average wage rate of $7.27 an hour, this would have had any effect on the profitability of jobs that you have bid since July of 1973?

MR. KLEIN: Again, I object, there is no showing that he could not effect reductions elsewhere.

Granted, if you pay higher wages, unless you reduce it someplace else, your profit is going to be less.

That speaks for itself, there

is no dispute about that.

THE JUDGE: The question is proper though, I will allow the answer. Overruled.

A Yes.

Q Would you have been able to make a profit?

A To be honest with you, I don't even know if I would have gotten the job.

Q What is - -

THE JUDGE: What do you mean you doubt if you would have gotten the job?

THE WITNESS: We are in a competitive business. If I have to add on the wage rates of Local 455, to the bottom of the sheet, therefore, it would increase the cost of fabricating a piece of iron.

Therefore, if I had to pass the cost on to the owner, I don't think the owner would have given me the job.

THE JUDGE: In other words, you

would not have gotten the bid?

THE WITNESS: That is correct.

Q Have you entered into any discussions with any people regarding their interest in investing or lending any money to Kevin Steel subsequent to September of 1973?

A Yes, I have.

Q Could you tell the Court what has been the basis of these discussions?

A Well, I have two companies which are interested in taking a very nice position in my company but with respect to us - -

Q By position, would this be investing in the company?

A Well, investing with dollars, with knowledge, with financing with the bank.

With dollars, mainly is what we are looking for.

Q What has been the result of these inquiries and these negotiations?

A Well, the problem is that we have had Local 455 and the National Labor Relations Board and the Court and we have had these proceedings and whatnot

and they are just a little bit reluctant at this particular time to enter into any agreement with me if I am still under a Local 455 contract.

Q Would this be primarily because the cost of this contract is so high?

MR. KLEIN: Objection, leading.

THE JUDGE: Sustained.

Q What are - - What effect, if any, would the cost of wages which would be mandated by Local 455's contract have, if anything?

A Well, it stands to reason - -

MR. KLEIN: I think we are getting far afield, far beyond hearsay, we are getting into surmise as to the basis for hearsay.

THE JUDGE: Sustained.

Q If this Court were to set aside the Local 455 contract, would you be able to receive financing such that we could submit a plan of reorganization to this Court?

A I think these people would be in a positio to look at us very favorably.

Q If this Court rejected our Applica-

tion to set aside the Local 455 contract, would you be able to remain in business?

A If they did not reject it?

Q Yes.

A I don't particularly think so.

Q If they did reject our Application, you would not be able to remain in business?

A Right.

MR. CRANER: I have no further questions.

THE JUDGE: On what ground, what reasons?

EXAMINATION BY MR. CRANER:

Q Why couldn't you remain in business?

A Well, right now I am able to do work, get work and make a profit. If I have to take Local 455's men, I have to increase my wage rate.

The local itself goes ahead and puts their men in, their shop stewards, their people and the control of our shop is lost.

Q Would it affect your profitability?

A Absolutely.

Q Such that you would not be able to

remain in business?

A I would say so.

MR. KLEIN: Objection, leading.

MR. CRANER: I have no further questions.

THE JUDGE: I will sustain your objection as to the effect.

Repeat the question.

(The question was read back by the Reporter.)

Q Would you be able to stay in business?

A No.

MR. CRANER: I have no further questions, thank you.

THE JUDGE: Cross examination.

EXAMINATION BY MR. KLEIN:

Q What are the names of the two companies that you have said have discussed the question of investing with your firm?

MR. CRANER: I object to that, I think that's confidential and it would be highly prejudicial to any negotiations that are going on if the

principals were disclosed.

THE JUDGE: I will sustain your objection.

MR. KLEIN: Your Honor, possibly we would want to subpoena them.

I have no way now of comparing - -

THE JUDGE: I realize that, but I think it's irrelevant as to whether or not they are willing to come in or not come in.

The sole issue as I see it is whether or not the contract is onerous with respect to the operation of the business, not whether or not they can bring in outside investors.

That is to effect a plan. At this point, it's only a question of whether he can continue successfully under this contract or whether or not the contract is so onerous and burdensome as to prohibit him from continuing, which would necessarily mean a failure with repect to his Chapter XI arrangement.

MR. KLEIN: Then the entire testimony that they have offered - - I move to strike the entire testimony that he offered about these other companies because if I can't cross examine - -

THE JUDGE: You didn't object, but it's all hearsay. If you move to strike, I will grant your motion to strike it.

MR. KLEIN: I move to strike it.

Q You testified that your dispute with the union about the wages you were paying arose in June of 1973, is that correct?

A No, it was prior to this time, when I told the union that I was having problems, that I had to be more competitive, that there were other shops in the area.

There were shops coming from outside the area that I thought that in July we should have some kind of a sitdown because economically we could not afford to continue.

Q But it arose in June and July of

3 1973, the question of the wages?
4 A The question of the wages arose before
5 that.
6 Q When, when was the first time that
7 you mentioned the question of wages?
8 A Oh, back maybe four, five months prior to
9 that time.
10 Q Whom did you mention the question
11 of wages to?
12 A Both to the business agent and Mr. Colavito.
13 Q When was your first discussion with
14 Mr. Colavito about the question of wages?
15 A Like I say, maybe about four to five months
16 prior to that time.
17 Q March, April?
18 A Somewhere around there. We have testimony
19 on that prior.
20 Q You had testimony before the National
21 Labor Relations Board?
22 A Right.
23 Q Is that correct?
24 A Right.
25 Q Your troubles with Local 455 didn't

begin in July of 1973, isn't that correct?

MR. CRANER: There is no testimony that the troubles began in 1973, Your Honor.

I object to the form of the question.

MR. KLEIN: He implied that they begin in July of 1973.

THE JUDGE: I will overrule the objection and permit the question.

Q This didn't start in July?

A No, I said prior to July 1st.

Q They actually started much earlier in the year, isn't that so?

A That is correct.

THE JUDGE: Well, he testified they arose four or five months prior to July, 1973.

Q They arose in February, 1973, isn't that so?

A I think they arose before February.

Q They arose - - well, there was a strike because of your failure to make payments to

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the pension and welfare funds, is that so?

A That is correct.

Q That occurred in February, 1973?

A Yes.

Q Is that the first problem you had with Local 455, in 1973?

A Yes. - - No, because of the economic conditions, I was unable to pay the welfare and pension because the men were not producing what they were supposed to be producing.

This way I couldn't pay their bill.

Q Did you ultimately pay the pension and welfare contributions?

A Yes.

Q Prior to the time that the men walked out in February of 1973, how many employees did you have?

A I think around fifteen.

Q After the men walked out in February, 1973 and after you paid the amount that was due and owing to the pension and welfare funds, how many employees did you have?

A One.

Q How long did you continue with one employee?

A Until July 1st.

Q Then after July 1st, how many employees did you have?

A Four.

Q Four, as you have testified.

A Yes, right.

Q How many of those four are former Local 455 men?

A Three.

Q What are their titles? - - Are they mechanics, are they finishers?

A Actually, there are no titles after July 1st.

Q Suppose you tell us, were they doing the work - -

A They are all around people, they do everything.

Q You no longer differentiate between mechanics and finishers since July of 1973?

A No, that is correct.

Q In 1972, your profit was $18,000,

is that right?

A Yes.

Q That is corporate profit?

A We are under a sub-Chapter S.

Q I don't understand that. Is that corporate profit?

A Yes, that's corporate profit.

Q Do you pay yourself a salary? - - Did you pay yourself a salary in 1972?

A Yes, I did.

Q Is your salary in addition to and above that $18,000 profit?

A Yes, it is.

Q What was the amount of your salary in 1972?

MR. CRANER: Objection.

THE JUDGE: Overruled.

A I think it was around $15,000.

Q Were you the major stockholder of the company in 1972?

A Yes.

Q In 1971 you had a profit of $17,000, isn't that so?

A That's correct.

Q Did you pay yourself a salary in 1971, as well?

A Yes.

Q What was the amount of your salary in 1971?

A Oh, if I can remember rightly, $13,000, somewhere around there.

I am not too sure, I would have to look at my records.

Q In January and in February of 1972, you worked with approximately fifteen bargaining union employees?

A Correct.

Q Then a strike took place - -

THE JUDGE: How many?

MR. KLEIN: Fifteen.

Q Then a strike took place and for the rest of the year you worked with one employee through July, is that right?

A That's correct.

Q In 1973 - - since July you have been working with four employees?

A That is correct.

Q In 1973 you sustained a substantial loss?

A That is correct.

Q The three employees who are still with you who were Local 455 men, how long have they been with you?

A One fellow is with me since I opened the shop.

Q 1968?

A Right. The other fellow came about a year and a half later, from when I opened the shop and the other, the last one, was only with me for around six months.

Q Of those three employees, talking now about the three employees who are Local 455 men who are still with you, were any of those finishers?

A One was a finisher.

Q The other two were mechanics?

A Yes.

Q Before the strike in February of 1973, how many mechanics did you have and how many finishers did you have?

A I would say I had about four - - five finishers and eight, eight mechanics.

Q If we are talking about fifteen men, the ratio is two to one, two mechanics to one finisher?

THE JUDGE: That's only thirteen.

MR. KLEIN: That's why I am asking the question.

THE WITNESS: I don't know what the ratio would be.

Q Since February of 1973, have you yourself been working inside the shop?

A Since February, yes, I have.

Q Have you been spending a substantial amount of time working inside the shop since February of 1973?

A Yes.

Q Have you been spending more time inside the shop since February, 1973 than you did before February, 1973?

A Yes.

Q Prior to February, 1973, were you what I would call generally the business getter?

A Yes.

Q Since your troubles with the union arose in February, 1973, is it fair to state that you have been spending less time than formerly in the capacity of a business getter?

A No.

Q You have been spending the same amount of time out in the field as you were before?

A Well, it's all according to what you call the field. I get plans and I work at night.

So therefore, I am spending about the same amount of time, except that I am working a double day.

Q I want to know about soliciting business. Going around soliciting business, as you testified when your Counsel questioned you.

A We don't solicit business, the business people contact us and ask us if we would like to bid a job.

We pick up a set of drawings and instead of us doing it during the day, as prior, I do it during the night.

Q Prior to February, 1973, did you go

out and spend time with potential customers?

A Not that much time, no.

Q Did you spend time?

A We spent a little time, yes.

Q Since February, 1973, have you been spending less time with potential customers?

A Yes.

Q You testified that you bid for jobs against companies located as far away as Pennsylvania, Massachusetts, Maine and North Carolina.

I think you used the phrase "A very large spectrum of shops", isn't that so?

A That is correct.

Q You bid for jobs as to other companies which have contracts with Local 455, do you not?

A Do I bid to other companies?

Q No, do you bid jobs that other companies which have contracts with Local 455 also bid on?

MR. CRANER: That is now?

A I don't really now.

MR. CRANER: Objection.

THE WITNESS: I don't know who - -

MR. CRANER: Are you talking about now or at other times, I don't understand?

Q Let's start with prior to February of 1973.

A Prior to '73? - - Offhand, I would imagine so.

Q You bid for a job in New Jersey, isn't that so, and obtained it successfully, along with another company that did have a contract with Local 455?

A I don't know which job youare referring to.

Q Do you know Port Chester Iron Works?

A Port Chester, yes.

Q They are a competitor of yours?

A I would say not really.

Q Didn't they and you divide a job?

A No.

Q At no time?

A No.

Q Have you ever worked on any jobs along with Port Chester Iron Works?

A The only thing that I have ever done with Port Chester Iron Works is that in 1971 I fabricated a job for Port Chester Iron Works.

Q You fabricated a job for them?

A Right.

Q Are you aware that they were a 455 shop?

A Yes.

Q Your contract in 1972, up through February, 1973, was the same contract as far as wages and fringe benefits as other shops that had contracts with Local 455, with the exception of Poughkeepsie Iron Works, is that so?

A I would imagine so. I don't see their contracts.

Q Well, wasn't it represented to you that it was the same contract?

A Well, we have what are called independent shops and we have allied shops.

From what I understand there are two dif-

ferent contracts.

One is a little bit more beneficial. In what capacity, I don't know, but this is again, I never see the other contract.

Q Did you ever ask for it and have it refused to you?

A Yes.

Q In collective bargaining, the union refused to give a copy of another contract to you?

A Yes.

Q In 1971 and in 1972, when you made the profit that you spoke of, your rates of wages and fringe benefits were the same as the other contracts with Local 455, were they not?

A I would imagine so, yes.

Q Wasn't the main bone of your dispute with Local 455 beginning in February, 1973, whether or not a certain Chief Steward should be returned to the employment of the company?

A That was not a bone, that was part of the overall economic picture that we talked about, yes.

Q You wanted him gotten rid of?

A I wanted the union to reprimand him for his actions.

Q You didn't want him eliminated from your employment?

A Did I want him eliminated from my employment? - - I told the union that he could stay on, he could be in my employ but they had to tone him down.

He was just a little - -

Q Did you demand that he be removed as steward?

A Did I demand that? - - I may have, in a fit of rage, told him I can't stand this guy, get him the hell out of here, sure; affecting the whole economic picture of twenty guys.

Q Port Chester Iron Works is located where, Port Chester, New York?

A That is correct.

Q There is another shop that has a contract with Local 455, which is fairly close to you, isn't that so?

A Yes, they moved up from the city.

Q What is the name of that shop?

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A Grossman Steel Stairs.

Q Where are they located physically with respect to you?

A About eighteen miles, nineteen miles.

Q Do you know a company called Tri-State?

A Yes.

Q Do you know that they have a contract with Local 455?

A Yes, they do.

Q How far away from you are they located?

A About a half mile.

Q A matter of blocks, right?

A A half mile.

THE JUDGE: Is Tri-State a competitor of yours?

THE WITNESS: We don't - - he bids mainly in the city.

I haven't been up against him on too many jobs, maybe one job in the amount of years that I have been there.

Q There is no external force that keeps

you from bidding in any one particular area, is there?

A No.

Q For all you know, association shops which have contracts are able to bid on many of the same jobs that you bid on?

A They might be able to, sure, but I will tell you, I can't go out of my area to bid, because of a different wage rate.

Q Didn't you testify that you bid against shops located in Pennsylvania, Massachusetts Maine and North Carolina?

A Yes, when they come into this area.

Q Have you had any jobs outside of Orange County or Rockland County?

A Yes, I testified I had a job in Long Island.

Q Have you had any jobs in New Jersey?

A A couple of jobs in Jersey.

Q You bid against other shops in the metropolitan area to obtain that job in New Jersey?

A To be honest with you, I don't know what shops because at the time they don't tell me who I

Palatnik

am bidding against.

MR. CRANER: Can we have the dates when you bid these jobs in New Jersey?

THE JUDGE: You can establish that, if you wish, on redirect.

Q In February of 1973, how many days did the strike last until you made the payments and the contributions?

A One day.

Q After that one day strike you then cut your work force down to one man, is that correct?

A At that particular time, yes.

Q Prior to that strike you had fifteen men?

A That's correct.

Q Your first contract with Local 455 was about 1968?

A Yes, sir.

Q How many men were in the bargaining unit at that time?

A I think about six.

Q In 1973, before the strike, you had fifteen?

A That's correct.

Q For how long a period of time have you been paying the same wages and fringe benefits as the other association shops?

A Well, from the end of '68 until July 1st.

Q Didn't they give you a period of time to catch up to the association rates?

A Originally, yes.

Q How much time did they give you before you were caught up?

A I don't remember, I guess maybe about two years.

Q Two years to catch up?

A I think so, because we came in in the middle of one of their three year period contracts and then it was two years later, I think.

That's how it worked.

Q So you were fully caught up by 1970?

A Yes.

Q In 1970, did you make a profit?

MR. CRANER: Your Honor, this was asked and answered.

MR. KLEIN: '71 and '72.

THE JUDGE: You didn't mention '70 and I will allow it.

A Yes, I did.

Q About how much was your profit in 1970?

A I think about $7,000 or $8,000.

Q In addition to Local 455, you have collective bargaining agreements with two other unions, isn't that so?

A That's correct.

Q Have you made any application to this Court to cancel the unexpired portion of either of those contracts?

A No.

Q Since you have had contractual relations with Local 455, what physical changes have you made in your enterprise?

Have you purchased new buildings, have you grown physically from 1968 to the present?

A What physical changes have I made?

Q Yes.

A Yes, I put up a new building, I bought a piece of equipment - - I leased a piece of equipment.

Q When did you put up the new building, approximately?

A Three years ago, four years ago.

Q Did you move to this new building or was this an additional building?

A This was an additional building.

Q So you still have the first building that you started in?

A That's correct.

Q Can you give us an idea of how much larger the new building is than the first building?

A Well, you couldn't consider it as a building. It's a crane runway. That's what it's called.

In order to do the type of work that I wanted to do, I needed a crane pickup 5,000 pound, 10,000 pound.

In order to have that, we had to have a

building to carry it.

Q You put that in in about 1970?

A '70, '71, somewhere around there.

Q Did you buy the land for the building or did you lease it?

A No, I leased the land.

Q You leased the land and you paid for the building, is that correct, or did you lease both the land and the building?

A We lease both the land and the building.

Q How much a year, approximately, did it cost you for rental of this land and building?

MR. CRANER: Is this the additional land and building?

A The additional land and building? - - I have one lease on it. I don't understand.

Q What is the difference in rental - - Is this on a separate piece of property?

A Let me explain it to you. No, it's on the same piece of property. Originally when I went into this thing the man that I was renting from gave me a break.

I was renting five acres and a building

for $250.00 a month.

He wanted so much money in five years and he reduced my payments in the beginning but added it on to the end.

Q So now when you put the new building on, was there any increase in rent?

A No.

Q Who paid for the construction of the new building?

A Who paid for the construction? - - We paid for the construction.

Q How much did you pay for the construction of the new building?

A I don't think the figures are available. I don't know. We did it when we were slow, when we didn't have any work.

We fabricated some pieces and put it up.

Q $10,000, $20,000?

A Maybe around there, I don't know exactly.

Q And the size of the building, the craneway?

A The size of the crane runway is 60 x 240.

Q You testified that the average cost,

labor cost is 48%?

A That's correct.

Q Is that your total labor cost?

A No, that's the shop labor.

Q Just shop labor alone?

A Yes.

Q What is the cost of your other labor besides shop labor?

A What is the cost of the other labor with reference - -

Q The other percentage. You say 48% on any contract, 48% of it has to go to shop labor?

A Right.

Q You have contracts with two other unions.

I would like to know what percentage goes to their labor?

A Oh, they are very, very small, very small.

Q Could you tell us?

A Trucking is maybe half a percent and the outside erection, oh, I don't know, about 8%, maybe

Q Prior to February of 1973, how any

outside erection employees did you have?

A Prior to '73?

Q Prior to February of '73?

A Prior to February, '73, approximately three.

Q After the strike of Shopmen's Local 455, how many erection employees did you have?

A I think we had one and then I put another man on and then we laid him off and then I kept one.

Q How many employees did you have in trucking?

A One.

Q He's continued?

A Yes.

Q In 1972, did I understand you correctly that you grossed $1,500,000 for the entire year?

A That was my sales.

Q Your gross sales?

A Yes.

Q You had fifteen employees at that time?

A Yes.

Q You made a profit in 1972 - -

A I would like to rephrase that. I lost money in 1972.

Q Didn't you testify on direct examination that you made $18,000?

A Yes, I did.

Q Any retracing you can do with your own Attorney.

MR. CRANER: I think the question was asked.

I think that's proper. You asked Mr. Palatnik whether or not he lost money in 1972 and he's trying to answer to the best of his ability.

He is responding to your question.

MR. KLEIN: I withdraw the question. I have no further questions of Mr. Palatnik at this time.

THE JUDGE: Redirect?

MR. CRANER: Yes, I just have a few questions.

EXAMINATION BY MR. CRANER:

Q I asked you on direct examination whether or not you made or lost money in 1972.

I think you testified that you made $18,000.

Have you reconsidered that answer?

A Yes, I get - -

MR. KLEIN: I object, he is impeaching his own witness.

MR. CRANER: No, the witness - -

THE JUDGE: No, he is not impeaching his witness.

He is not questioning the credibility of this witness. Maybe as to his memory since he has indicated that that may not have been a correct figure.

You may proceed.

Q What, in fact, is the correct figure as to the profitability in the year 1972?

A I get mixed up with fiscal years and everything else. Our fiscal year ends October 31st. I am always - - it takes in '71 and part of '72.

Q Well, for fiscal '72, did you make

or lose money?

A In fiscal '72 we lost money.

Q How much was that?

A That was the $86,000 I spoke about before.

Q When does fiscal '72 end?

A October 31st.

THE JUDGE: $86,000 or $8,600?

THE WITNESS: $8,600.

Q I believe that you were in error when you said in 1973 you lose $86,000, is that right?

A That's right, because our fiscal year ended in October and we filed for an extension.

We haven't set down anything yet.

Q Prior to any strike or work stoppage which occurred in February of 1973, for the previous fiscal year you had, in fact, lost $86,000, is that right?

A That's correct.

Q Did you make any money for fiscal '71?

THE JUDGE: Wait a minute, let me get this straight. Did you

say that for fiscal '73 there was a loss of $86,000?

THE WITNESS: Yes.

Q Was that fiscal '72?

A '72.

Q Fiscal '72 you lost $86,000?

A Fiscal '72 we lost $86,000.

THE JUDGE: What about fiscal '73?

THE WITNESS: Fiscal '73 - - again, I am getting confused. I get confused about this.

Q Take your time.

A This is '74. So that would be October 31st We actually as of '73 - - I don't know the exact figures for '73 yet, Your Honor.

THE JUDGE: So that when you testified that in '73 there was a loss of $86,000 and a profit in '72 of $18,000, both figures are incorrect.

That, in fact, in '72 there was a loss of $86,000 and in '73 you have no figures?

THE WITNESS: And '73, yes, I have no figures at this time.

Q Do you know whether the loss for 1973, fiscal '73 would be the same, greater or less than the loss for fiscal '72?

A Well, at this particular time, I don't know.

Q You testified that as to the contracts, the unexpired contracts with Local 417, Local 40 and Local 361, that you have not petitioned this Court to set these contracts aside, is that right?

A That is correct.

Q Could you tell the Court why you haven't moved to set these contracts aside?

A Well, because competitive-wise, if I figure a job in the Local 417, 40 or 361 area - -

Q What is that area?

A Well, Local 40 takes in New York City, Manhattan, the Bronx, Brooklyn and I think Staten Island and Westchester.

361 takes all of Long Island. Local 417 takes five Counties and upstate which are Orange, Rockland, Sullivan, Ulster and Dutchess.

If anybody comes in to that area, they have to figure the wages for that particular area for the erection.

Therefore, competitive-wise, anybody coming into our area is exactly the same as I am.

I figure the same wages as they will figure.

Q So then a company coming in from the outside would have the exact same wages that you would have to pay within this area, is that right?

A That's correct.

Q This isn't the same situation, of course, that you have with Local 455, that people could come in from the outside, from New York City with wages, perhaps less than yours and in effect compete against you, is that right?

A That is correct.

Q For the fiscal year ending in 1973, did you lose money?

A Like I said before, I wouldn't - -

Q You are not able to answer that?

A Not at this particular time.

MR. CRANER: I have no other questions, thank you.

EXAMINATION BY MR. KLEIN:

Q When does your fiscal year end?

A October 31st.

Q When does the fiscal year of 1973 end, October 31st of what year?

A 1973.

Q You have no idea whether you made money or lost money in 1973?

A Well, I would say at this particular time - I have a good idea that I lost money.

If I lost $86,000 the year prior, that's a carry forward and we are losing money all the way through.

Q Do you have any records which show that you lost money in fiscal year 1972?

A Yes.

Q Do you have them with you here today?

A No.

MR. CRANER: Your Honor, we would be agreeable to furnish to the

Court and to Mr. Klein, Mr. Palatnik's company's statement for fiscal 1973 immediately at the end of this hearing.

If there are any questions, we would certainly respond to them.

MR. KLEIN: I am interested in the fiscal '72 statement where he says now he lost $86,000 after saying first he made money.

MR. CRANER: We will produce copies of those records.

THE JUDGE: When will you produce them?

MR. CRANER: Immediately. If there is any question or issue to them -- these are your official company statements on your returns?

THE WITNESS: That's right.

MR. KLEIN: We have two diametrically opposed statements as to the man's profits in 1972 and I think I would need those to cross examine the witness further.

Q When did you first realize in fiscal 1972 that you lost $86,000?

A When did we realize? - - When we put together the last statement.

Q When was that?

A That was around January of 1973.

Q You mean during the entire year 1972 you had no idea whether you were losing or gaining money?

A We have some idea. Some jobs we lost a little bit, some jobs we gain a little bit, but we don't put it all together until we take a complete picture.

At that particular time we look at our inventory, we take an inventory check. We don't during the year take any inventory check.

We spotcheck here and there, yes, but nothing in total.

Q You have no books or records here that we can examine to determine how the figure of $86,000 loss in 1972 is arrived at?

A No. If I would have known, I would have brought them with me.

Q You say that you first became aware of this loss in January of 1973?

A That's when we put the total figures together.

Q Did you have a Certified Public Accountant prepare the records for fiscal 1972?

A No.

Q Who took care of the books in putting it together?

A We have an accountant, but the statement was not certified.

Q Can you tell us who the accountant was?

A Yes, he is Coe & Heinberg.

Q Where are they located?

A In New York.

Q Do you have an address for them?

A I think they are at 217 Broadway.

Q Were they also your accountants for fiscal year 1971?

A No, they weren't.

Q When did they take over as your accountants?

A Again, all of this is in time, time sequences.

I would have to go back and check all the time sequences.

Q Well, was it after the reports for fiscal 1971 were completed?

A I tell you, I don't know.

Q Can you tell us whether or not the accountant who figured out your profit or loss for fiscal 1972 may have used different criteria than the accountant who figured out your profit and loss for the fiscal year ending in October, 1971?

A I don't think so, they both went under the same rules for accounting.

Q Can you be sure of that, are you sure of that, that they were consistent with each other?

A Consistent with each other, yes.

Q Would you tell us who your 1971 accountant was?

A Murray Korn.

Q Where is he located?

A He was in Haverstraw, New York.

Q What were the two years that you made the money that you talked about on direct examination of $18,000 and $17,000?

A Well, I made money in '67, '68 - - no, October of '68, that would be '69.

I made money in '69 - -

MR. CRANER: Is that fiscal '69?

THE WITNESS: Fiscal '69, fiscal '70 I made, '71 I made.

So in '69 we made about $3,000 or $4,000.

Then we made subsequently I think it was around $16,000 and then the $18,000 or $17,000 in there.

MR. KLEIN: Your Honor, I would like to see - - in view of the conflicting testimony by the same witness on this profit and loss statement - - I would like to see his accountants' reports for the fiscal years say beginning with 1971, '72 and '73.

THE JUDGE: He didn't testify from

the reports and although you did not subpoena them, I am going to direct that Counsel produce these records.

MR. CRANER: We will. Do you want a copy of them first?

THE JUDGE: Hold on. I will direct that you produce them tomorrow morning here so that you can continue your examination tomorrow morning.

MR. CRANER: Can you make it tomorrow afternoon. I have to be before Judge Evans at 9:30 in Supreme Court for a conference that will take about a half hour.

I can be here at 11:00 o'clock.

MR. CRANER: I am - -

MR. KLEIN: Fine.

MR. CRANER: We will be here at 11:00 o'clock and I will direct Mr. Palatnik to be here at 9:30 with the records so you can look over them.

THE JUDGE: There may be further examination. I'm sure there will be.

We will have a Court Reporter here tomorrow morning.

MR. CRANER: I have to be before Judge Evans.

It will be too late now to call it off.

THE JUDGE: Off the record.

(Discussion off the record.)

THE JUDGE: We will recess now and adjourn in order to allow Counsel to produce the records with respect to which the witness just referred and his testimony on figures.

We will resume tomorrow at 10:00 a.m.

MR. KLEIN: If it will not upset your schedule, your calendar tomorrow, I am prepared to go forward with Mr. Colavito tomorrow morning and resume with this witness tomorrow afternoon.

But I am at your pleasure. If you prefer to take it witness by witness - -

THE JUDGE: We will adjourn today

until tomorrow at 10:00 o'clock a.m.

- - - - - -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

KEVIN STEEL PRODUCTS INC.,

Debtor

No. 73 B 909

30 South Broadway
Yonkers, New York

February 22, 1974
10:00 o'clock A.M.

CONTINUATION OF HEARING RE: REJECTION OF CONTRACT
(LOCAL 455)

B E F O R E:

HON. HOWARD SCHWARTZBERG,

Referee In Bankruptcy

DECISION RESERVED

RAYVID REPORTING SERVICE
CERTIFIED STENOTYPE REPORTERS
150 NASSAU STREET
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- - - - - -

P R O C E E D I N G S

THE JUDGE: Let the record reflect that I received an Application from the National Labor Relations Board to the effect that they seek leave to withdraw their appearance without prejudice to their right to take a position upon the legal issues involved in the Debtor's Petition in a later stage of this proceeding.

If there are no objections from Counsel, I will certainly allow them to withdraw without prejudice.

MR. CRANER: Well, I can't prevent them from either coming in or withdrawing.

So we take no position at all on that.

MR. KLEIN: Your Honor, I have not seen that document. However, we have relied on their Brief in part.

Until I take a look at that, I frankly don't know what I can say at this point.

THE JUDGE: Let me show you what they submitted (handing).

MR. CRANER: Your Honor, I have just glanced over with Counsel the Application of the Motion by the National Labor Relations Board for leave to withdraw.

On behalf of the Debtor in Possession, we take no position.

We reserve whatever rights, if any, we have regarding this move by the National Labor Relations Board.

MR. KLEIN: Your Honor, we, of course, can't prevent the Board from doing what it wants to do.

However, as I stated to you before, the arguments stated in its papers which it previously filed we consider to be sound and we would want them still to be considered by you, notwithstanding that they are in a vacuum.

THE JUDGE: All you need to do is adopt their Brief.

MR. KLEIN: I don't want to adopt it in whole.

I think the content should still be considered by you and we would incorporate it to that extent in our Brief, without filing another piece of paper.

THE JUDGE: By all means. With that, I will grant the motion to withdraw.

You may proceed with the witness.

R O B E R T P A L A T N I K, Recalled as a witness, having been previously duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. CRANER:

Q Yesterday afternoon the Court asked

you to produce certain statements and records regarding the operation of Kevin Steel.

Pursuant to that directive, did you, in fact, seek out these documents?

A Yes, I did.

Q Can you tell the Court where you obtained the documents from?

A I obtained them from my accountant.

Q Could you give us his name and address, please?

A Yes, Seymour Heinberg, 217 Broadway, New York, New York.

Q Is he the accountant for Kevin Steel?

A Yes, he is.

Q How long has he been the accountant?

A Two and a half years, I think, now.

Q I show you certain tax returns (handing).

Could you tell the Court what these represent?

A The first tax return is an 1120S which was filed for my October 31, 1972 year ending.

Q This one is an 1120S also, which was filed October 31, 1971 year ending?

A Yes. This one here is the October 31, 1970, 1120S.

Q These are copies of the originals that were filed with the tax returns, is that right?

A That is correct.

Q Also, did you make photostatic copies of the documents that you have just testified to?

A Yes, I made photostatic copies of the front page.

MR. CRANER: We are going to introduce these documents into Evidence.

Since these are Mr. Palatnik's only copies, what I would respectfully like to do is - - after your inspection and Counsel's inspection - - to introduce photostatic copies of these documents.

THE JUDGE: Substitute the copies for the originals. I don't see there will be any objection.

Palatnik

MR. KLEIN: I have no objection to the substitution if the originals are admitted.

But I will have some objections if that's all he has brought in response to what your direction was yesterday.

In other words, I don't consider that the tax returns are the items that we talked about yesterday.

What we talked about was the accountant's statements and financial statements which he said were uncertified statements.

If this is all he has brought, I don't think it is in compliance with your Order at all.

MR. CRANER: I think it's better compliance. What we are producing are documents that were filed ,that are on file with the United States Government, Bureau of Internal Revenue, Internal Revenue Service, signed by Mr. Palatnik.

I think they are the most - - they

are the most meaningful documents that can be produced.

THE JUDGE: Why couldn't the accountant's reports be produced?

MR. CRANER: I might even have those.

THE WITNESS: They are actually the same thing.

MR. CRANER: They will be the same thing.

THE JUDGE: You might wish to introduce the tax returns but produce the accountant's reports in compliance with the directive of the Court as requested by Mr. Klein.

MR. CRANER: I think what we are trying to do is to - - we have statements, we could produce those, too.

I think the tax returns are the best evidence.

THE JUDGE: You might think the tax returns are the most cogent and wish to introduce them, but Mr. Klein wants

the accountant's reports.

THE WITNESS: Here's '71 and '70. We are at this time unable to produce the '72 one.

Q Did you ask the accountant for the 1972 report?

A Yes, at this time he doesn't have one.

MR. CRANER: We would offer In Evidence the tax return for Kevin Steel for the year ending October 31, 1970, October 31, 1971 and October 31, 1972.

We are also offering the report of the accountant, the statement of the accountant, uncertified report, for the year ending October 31, 1970 and October 31, 1971.

We offer these In Evidence.

MR. KLEIN: I object to their being offered In Evidence at this time. The documents which I sought were demanded so that I could proceed with cross examination of the witness.

I in no way concede that an adequate foundation has been laid for any of these documents.

Obviously, the accountant is not here. I can't cross examine him.

So I will not concede that this can be properly admitted into Evidence.

I would like to examine them to cross examine the witness with.

MR. CRANER: Your Honor, the Local 455 Counsel had the right at any time, especially after yesterday's session in which the name and the address of the accountant was given to subpoena the accountant, if he wanted him.

All Counsel asked for were the records and we produced these.

THE JUDGE: I don't want to extend the argument. Counsel is correct in that as far as the accountant's records are concerned, he simply wished to examine them for the purpose of his cross examination.

You may wish to introduce the tax returns, which is another matter.

MR. CRANER: Then I offer the three tax returns In Evidence.

THE JUDGE: Right now we are on cross examination.

MR. CRANER: Well, I thought that we had opened up our case just for the purpose of my witness producing the tax returns, pursuant to your directive.

We have produced them and I think it would be appropriate.

THE JUDGE: You can produce them, make them available. Mr. Klein can continue with his cross examination and then on redirect you can put in the tax returns.

MR. CRANER: Fine, Your Honor. At this time then I will withdraw my offer.

Also, Your Honor, just so that Counsel is aware and in order to save time, we are also going to introduce into Evidence worksheets for the period - - accountant's worksheets for the period

ending January 31, 1973, which will show the net loss of Kevin Steel for that period to be - -

THE JUDGE: Well, you know, you are going to meet with the same objection with regard to the inability of Counsel to cross examine on the work-sheets.

They may be used and you know the Rules of Evidence, they may be used to refresh his recollection.

The witness can testify as to items and if he is not aware of the specific item, he can use the papers to refresh his recollection. But the papers are not evidence of the truth of the matter as asserted therein.

MR. CRANER: All right, we will reserve this for redirect.

THE JUDGE: Mr. Klein, would you proceed with your cross examination.

MR. KLEIN: Your Honor, may I have the original Petition that was filed

herein.

I have not had an opportunity to return to my office.

THE JUDGE: When you say, "The original Petition", you mean the Chapter XI Arrangement?

MR. KLEIN: No, the Petition to set aside this contract.

THE JUDGE: Here (handing).

MR. KLEIN: I ask that the document which is annexed to the Notice of Motion, namely the copy of the decision of the Administrative Law Judge of the National Labor Relations Board be deemed marked In Evidence before you and be deemed admitted before you inasmuch as it is attached to the Petition.

THE JUDGE: By all means.

MR. CRANER: I have no objection.

THE JUDGE: I assume not since you attached it to your papers.

MR. CRANER: Yes.

THE JUDGE: We need not assign an

Exhibit number to it, it's part of the evidence here.

MR. KLEIN: Thank you, Your Honor.

While I am examining the witness on these other things, perhaps my associates can look at these documents and save a little time.

MR. CRANER: I have no objection to that either, Your Honor.

THE JUDGE: Very well.

EXAMINATION BY MR. KLEIN:

Q Attached to your Petition to set aside this collective bargaining agreement with Local 455 is a decision of Administrative Law Judge of the National Labor Relations Board dated November 21, 1973.

At the end of that decision he directed that certain action be taken by Kevin Steel Products, Inc., the Debtor herein, isn't that correct?

A I don't know, I would have to look at that.

Q I am referring to the beginning on Page 17.

MR. CRANER: I object, I think we are not relitigating the matter before the National Labor Relations Board, whether or not there was or wasn't a directive.

I don't think that's relevant. The question here is should the contract, the executory contract be set aside.

THE JUDGE: Well, I think it has relevance and I am anticipating Counsel's argument that perhaps the Debtor has reasons other than the financial aspect for wishing to set aside or reject the executory contract.

Is that the purpose of your question?

MR. KLEIN: Yes, we believe this is an afterthought as stated in our Brief and I want to pursue that.

THE JUDGE: I will let you pursue it.

MR. KLEIN: Thank you, sir.

Q Have you looked at it?

A No.

Q Here (handing).

THE JUDGE: I hope, however, that you don't take undue time with regard to this issue because while there may be other reasons and other motives, nevertheless, if there is a cogent reason for setting aside based on financial aspects, the other reasons, while they may exist, are not going to be persuasive.

MR. KLEIN: Your Honor, I appreciate your candor, but I want to argue at this point, so long as it's brought up at this point, that the issue is not the same as to whether all other things being equal, this contract should be set aside.

You are asked to set aside the contract after and within a few months after a co-equal branch of the Federal Government has found that this employer is engaged in certain unfair labor

practices, including the failure to sign or comply with the contract that you are asked to set aside.

THE JUDGE: That may be true, but the point here is whether now, while the Debtor is in Chapter XI, that time does not relate to a Chapter XI situation.

Now, the Debtor is in Chapter XI and attempting to come up with a Plan of Arrangement.

The only question here is whether the financial difficulty under that agreement will preclude the Debtor from coming up with such a Plan of Arrangement.

That's the issue before this Court. There may be valid reasons other than financial reasons why the Debtor wishes to get out from under the contract.

But the only issue that I am concerned with is whether or not the Debtor will be precluded from coming up with a successful Plan of Arrangement by virtue

of an executory agreement which it finds onerous and burdensome.

The issue is whether it is, in fact, onerous and burdensome.

That's the issue that I would like you to meet.

MR. KLEIN: All right, but I respectfully submit that you have to consider more than that. You have to consider whether or not this Court should be used as a tool or a means to avoid obligations under the National Labor Relations Act.

I differ with you, respectfully, on the scope, on the permissible scope of your inquiry.

I think you do have to address yourself to the issue of whether or not you should permit this Court and the relief of Chapter XI to be utilized solely for the purposes of getting out from under obligations from the National Labor Relations Act.

THE JUDGE: There you answer the question of solely.

The issue I am concerned with is whether or not the Debtor is precluded from or will be able to come up with a Plan by virtue of the executory contract which it wishes to set aside.

In other words, I am mindful of the fact that a collective labor agreement is given serious consideration and is not to be treated lightly and is not to be set aside lightly because there are very important considerations underlying the existence of a collective labor agreement.

But we are in Chapter XI and now the issue is notwithstanding those basic policy aspects, should this Court set it aside because its existence precludes a successful Plan of Arrangement.

MR. KLEIN: Your Honor, I would also state to you that in this particular case, the position which the Debtor finds

himself is a result of the unfair labor practices which he has committed.

MR. CRANER: Your Honor, this is a question, if anything, first of all I must take exception to that.

I don't think Counsel is here to testify.

Counsel is here to ask questions of the witness and - -

MR. KLEIN: I am also going to state my position, which I want the Judge to know at the beginning.

I don't want to allow anything to go by default by saying I heard it, I agreed with it and by being silent, I agreed that was the proper legal context of this case.

MR. CRANER: This was certainly in your Brief.

THE JUDGE: Frankly, I read the opinion that is annexed to the moving Affidavit and I am aware of the practices that were attributed to the Debtor and

the determination by the National Labor Relations Board.

MR. KLEIN: My questions now at this time are addressed to the witness to find out what, if anything, he has done to comply with the Order of the National Labor Relations Board, which came down on November 21, 1973 and I think that is a pertinent matter for you to consider and I would like to proceed questioning him as to whether or not he has done any of the things that have been ordered in this Order of the National Labor Relations Board Administrative Judge herein.

THE JUDGE: You may ask him.

MR. KLEIN: Thank you.

EXAMINATION BY MR. KLEIN:

Q Have you seen this?

A Yes.

Q Have you received a copy of the Order previously?

A Yes.

Q Paragraph One of the Order states that, "Respondent, Kevin Steel Products, Inc., shall One, cease and desist A; discriminating against employees because of their insistence or the insistence of their representative on strict enforcement of the provisions of a collective bargaining contract covering the following unit. All production and maintenance employees and plant clericals employed in Respondent's plan excluding office clericals, watchmen, guards and supervisors as defined in the Act".

What have you done to comply with that paragraph since November 21, 1973?

A As far as I know, my Attorneys tell me that it's in an appeal right now.

Q You have done nothing to comply since November 21st?

A We are appealing the decision.

Q To whom?

A I would have to - -

MR. CRANER: Your Honor, I believe, I believe that this is pending before the National Labor

Relations Board, the Administrative Law Judge's decision.

This I am not sure of because it was handled by my partner, who is currently out of the country regarding another matter before this Court.

I believe - -

THE JUDGE: The witness has testified that he has four employees and they are all non-union.

MR. CRANER: We will stipulate at this time in order to save time, in answer to all of the questions, that Mr. Palatnik has not, in effect, complied with the Order of the Administrative Judge, is that right?

THE WITNESS: That is correct.

MR. KLEIN: In any respect?

MR. CRANER: He has not complied.

MR. KLEIN: Has he not complied in any respect, you are prepared to agree with that?

MR. CRANER: I think so. We are

not quibbling, we are not trying to use semantics here, we have not complied.

THE JUDGE: I think that will save time.

MR. KLEIN: Yes, I am perfectly happy with that answer.

Q You testified yesterday that the employees that you do have, three of them, did resign from the union, is that correct?

A That is correct.

Q When did they resign from the union?

A When did they resign? - - I don't know, they sent letters in from what I understand.

Q When did you learn that they had sent letters in?

A Oh, around the middle of July sometime.

Q When did you learn that they had sent the letters in?

A Didn't I just say that, around the middle of July.

Q How did you learn that, did they tell you?

A Yes.

Q Did you discuss with them beforehand the question of their sending letters in to the union?

A No.

Q In addition to this collective bargaining agreement and two other collective bargaining agreements that we learned about yesterday, you also have certain other contracts which have not expired, isn't that so?

A Other contracts that have not expired?

Q Outside of the collective bargaining area. You have a lease, for example?

A Yes.

Q You have not petitioned this Court to terminate your obligation under that lease, is that correct?

A Not at this particular time, no.

Q Do you have any other such long-term contracts?

A I don't understand when you say long-term contracts.

Are we talking about union contracts?

Q Any kind of contract. You told us about your union contract, I believe.

You don't have any more than three, is that so?

A That's correct.

Q You told us about the lease?

A Right.

Q Do you have any other long-term contracts which are still in effect?

A I have a lease on the property.

Q Anything else?

A Not that I can recall. I really don't know what you are trying to bring up.

Q Do you have any contracts with suppliers to make purchases from them over a period of time?

A No.

Q Do you have contracts with cleaning services?

A No.

Q Do you now understand what I am arriving at.

Do you have any other contracts with any

other persons which impose obligations beyond this point?

A I would like you to bring up what you would like me to answer because I don't know what you are trying to say.

MR. KLEIN: May I use this (indicating)?

MR. CRANER: Yes, by all means.

Q A contract with an accountant, for example?

A I have no contract with an accountant, no.

Q With your Attorney, do you have contracts with an Attorney covering a retainer for a period of time?

A No.

Q Have you a contract for equipment rental?

A I have a contract for the Thomas Punch which I told you yesterday.

Q How long does that have to run?

A I think it's for another year and a half.

Q What are the payments?

A As I spoke of yesterday, $1,600 a month.

Q You have not sought to set that contract aside, am I correct?

A That is correct. But at this particular time, I am in default on it.

Q Have you any contract with any shipping lines?

A No.

Q Do you have any contract with any suppliers of materials?

A No.

Q Am I correct that the only contract that you have sought to have set aside at this time is a contract with Local 455?

A That is correct.

Q How long have you been in the structural steel business?

A How long?

Q Yes.

A At this plant?

Q No, in the business generally?

A In the business, as I said yesterday, almost nineteen years.

Q You started - - How did you start

in the business?

A I started in a shop counting bolts.

Q You worked you way up how, through what routes?

A Through what route?

Q Yes.

A Well, I was a junior draftsman. From a junior draftsman, I went to a draftsman. From a draftsman I went to shop foreman. From shop foreman I went to - - back up to general manager, general management of the office.

I handled the interior, the field. From that point I went on to estimating.

From estimating I went on to - - again, the general layout of the whole plant and then I went into my own business.

Q Have you had any experience, either as a mechanic or finisher?

A Yes.

Q For how many years?

A Hbw many years?

Q As a mechanic or finisher?

A Well, it's hard to say how many years. I

would say that as far as I am concerned as a mechanic or a finisher, actual doing the work, maybe two years.

MR. KLEIN: May I have ten minutes to go through the materials and then I can cross examine the witness on the figures he submitted.

THE JUDGE: Off the record.

(Discussion off the record.)

MR. KLEIN: If Your Honor please, in looking at the materials that have been produced by the Debtor this morning, in the very brief time that we have had to look at them, we have observed one thing that appears to be a very striking discrepancy.

MR. CRANER: I think this is improper. Is the witness testifying, is he going to characterize a document as a discrepancy.

We have a witness on the stand. If you want to cross examine, that's the proper thing to do.

I think it's totally improper Mr. Klein, for you to sum up or try to argue with the Court as to the quality of anything produced here or what it means.

I strenuously object to it.

THE JUDGE: I am going to ask Mr. Klein to continue with the cross examination.

He has produced records for you and for your examination and which you can use in whatever fashion you think best.

EXAMINATION BY MR. KLEIN:

Q Would you look, sir, at what you have produced this morning as the tax return for the period ending October 31, 1972 and read for us the amount in there as inventory, closing inventory (handing)?

MR. CRANER: If the document is going to be read from, I think it should be introduced or identified.

MR. KLEIN: I absolutely refuse to identify it or even concede it is

authentic or accept it into Evidence.

THE JUDGE: I am going to overrule your objection and allow him to read from it.

You may then offer it afterwards.

A What did you want me to read?

Q I would like you to read the figure for the closing inventory as of October 31, 1972?

A $106,858.30.

THE JUDGE: This is which return?

MR. KLEIN: The return for the period November 1, '71 to October 31, '72.

Q You have also produced this morning a photostat of a sheet entitled, "Statement of Income Profit & Loss, three months ending 1/31/73".

Would you please read to us the inventory dated November 1, 1972 (handing)?

MR. CRANER: If the witness is to read from it, I think the document should be identified or at least have some testimony as to what this is.

We have produced the record.

THE JUDGE: I am going to overrule your objection.

MR. CRANER: I think it's confusion.

THE JUDGE: I am going to allow the witness to read it and you may offer it afterwards.

A $210,078.57.

Q This is as of November 1, 1972?

A Yes, this is a worksheet so I would imagine that's what he has down.

Q That's one day after the inventory that is on the tax return for the period ending October 31, 1972?

A I told you, this is a worksheet. It could be that he didn't cross that out or whatever.

I am not an accountant so I can't verify his markings on there.

Q I am not an accountant either, sir, but is it true that the larger the inventory at the close of an accounting period the less is your cost of goods sold?

MR. CRANER: I am going to object to that.

The witness is - -

THE JUDGE: If he knows, objection overruled.

MR. CRANER: If you know.

A Again, I state, I am not an accountant so I don't know his procedures.

Q Can you tell us, sir, what figures I look at in the income tax return for the period November 1, 1971 to October 31, 1972 which gives us the cost of shop labor (handing)?

A Salaries and wages.

Q Is all of that just Local 455 labor?

A No, part of it is the outside local.

Q Can you tell us from these figures - -

A No.

Q Is there any information here what percentage of it is Local 455 labor and what percentage is not?

A No, the only thing I can tell you is we had an average of eighteen men in the shop and we had an average of two men on the outside.

Q But the men don't receive equal pay, so you really can't tell from these figures what percentage belongs to Local 455?

A That is correct.

Q So there is nothing in these figures that tells us whether or not your estimate of 48% of sales amounts to shop labor is correct?

A According to those figures.

Q There is nothing that can tell us?

A No, I don't think so. Although you have our total wages with the welfare funds and the pension funds.

So you could tell.

Q Can you tell us what figures I look through to get yout total 455 costs?

A This is a tax return. It's not a document which states a breakdown of costs.

Q Do you know of any reason - - Was the accountant who prepared the document that you referred to as a worksheet for the three months ending 1/31/73 the same accountant whc prepared the tax return for the period November 1, '71 to October 31, '72?

A No, the worksheet was done by a person in my office.

He follows the accountant's sheet.

Q Can you give us any reason why he put down an inventory as of November 1, 1972 of $210,078.57, whereas the inventory on the tax return for the preceding day was $106,658.30?

A As you can see, that's a worksheet and that November 1st was probably the November 1st from the prior year, from the '72; I don't know.

It could have been that he didn't cross out that November 1st, being a worksheet.

Q I show you the document which is the tax return from November 1, 1970 through October 31, 1971 and I ask you if you can tell us what the inventory at the end of the year is as per that tax return (handing)?

A $77,508.28.

Q Do you agree with me, sir, that's not the same as the inventory for November 1, '72 as listed on the worksheet for theperiod three months ending 1/31/73?

A The figure here says $210,078.57.

Q Who in your office prepared the worksheet for the three months ending 1/31/73?

A Salvatore Nici.

Q What is his position in your company?

A He was controller.

Q Is he still with you?

A No.

Q When did he leave your employ?

A About three months ago.

Q Before he left, did he prepare any such worksheets for periods after 1/31/73?

A I would say yes.

Q Do you have them available?

A I think the Judge has a copy of the last one that we prepared.

THE JUDGE: Are you referring to the reports that you filed?

THE WITNESS: Right.

MR. KLEIN: May I take a look and see what the witness is referring to?

THE JUDGE: Off the record.

(Discussion off the record.)

MR. KLEIN: Do you have copies?

MR. CRANER: Not with me, I don't have that part of the file with me.

THE JUDGE: I have here the only report that was filed with the Court.

The Clerk has put the initials N.G. on it because it is not sufficiently acceptable in terms of the requirements of this Court, nor is it certified or any indication here that it was prepared by an accountant.

But this is the document that was filed (handing).

MR. CRANER: What is the date on it?

MR. KLEIN: September 14, '73 to October 11, '73.

Q Were there any reports prepared for the period between 1/31/73 and September 14, '73?

A No.

MR. KLEIN: I have nothing further of this witness at this time.

MR. CRANER: Your Honor, at this time I would like to introduce into Evidence the tax return for the year - - the fiscal year ending October 31, 1970, the tax return for the - -

THE JUDGE: Why don't you lay a foundation for it.

EXAMINATION BY MR. CRANER:

Q Mr. Palatnik, I show you a document and I ask you, is this the tax return that was filed for Kevin Steel for the year ending 1970, the fiscal year ending 1970?

A Yes.

MR. CRANER: I offer this In Evidence.

MR. KLEIN: I object. I want to make my objection at the conclusion of the foundation for all of the financial documents, if I may, because my objection relates to the connection between them.

Q Is this the tax return for the fiscal year ending 1971?

A Yes.

Q And for the fiscal year ending 1972?

A That is correct.

Q Are these the very same documents that Counsel asked you to read figures from in his cross examination?

A Yes.

MR. CRANER: I offer these Into Evidence.

MR. KLEIN: Your Honor, we raised a fuss about the inventory figures for this reason. I have been advised by Mr. - -

MR. CRANER: I object to what Counsel has been advised. This is totally improper.

THE JUDGE: This is argumentative.

MR. KLEIN: This is my objection. By Mr. Warner, an accountant, that the

inventory - - that with the inventory figure of November 1, 1972 as reported or as listed on this three month statement for the period ending 1/31/73, the inventory figure as of October 31, '72, the prior day on the tax return for the period November 1, 1971 through October 31, 1972, this tax return would have shown a profit instead of a loss.

Conversely, with the inventory figure of October 31, 1972, the inventory figure on the statement for the three months ending 1/31/73, instead of the figure listed there for the date of November 1, 1972, the operations for this three month period would show a profit instead of a loss.

On the face of it, without any expert exposition of these documents, I submit that they are of no validity in support of Debtor's position here.

On the contrary, they militate most strongly in objection to the testi-

mony of the Debtor, the accuracy of the projections that he has made and his generalizations about his estimates of costs and I submit that without further explanation or identification from some expert that they are without merit and except insofar as the discrepancies that have been shown, that they prove nothing to the Court.

MR. CRANER: May I be heard?

THE JUDGE: No, I will allow it for whatever worth it has, subject to all criticisms that may exist.

But these are the returns that the Debtor filed with the Federal Government and these returns may be marked In Evidence.

You may have an exception.

MR. CRANER: Your Honor, also Counsel makes reference - -

THE JUDGE: I don't need any further argument.

MR. CRANER: I find what he said

is incorrect and highly inflammatory.

MR. KLEIN: May I ask whether - - I think if those three are going to be admitted over my objection, then in the interests of completeness, this statement for the three months ended 1/31/73 also has to be part of the same package, over my objection.

THE JUDGE: Yes.

MR. CRANER: Your Honor, this is kind of nonsense. Here this man objects to something going into Evidence and then he says I have to put it in.

I don't understand it. What are we making a record here?

THE JUDGE: You want to put it in or what?

MR. CRANER: I haven't offered it, I haven't offered it. He is objecting to something I haven't offered and telling me I have to put it in.

THE JUDGE: He may put it in.

MR. CRANER: He is objecting to

it going in.

THE JUDGE: I have already allowed the returns for the years ending 1970, 1971 and 1972.

Let them be marked In Evidence as Exhibits "1", "2" and "3".

MR. CRANER: Your Honor, may I also be heard, the reason why I didn't offer the document into Evidence is that the witness on cross examination testified that he has no idea whether the worksheet is in any way accurate or valid.

Since it is not a tax return, it is not certified or audited, for that reason I did not offer it into Evidence.

For Counsel to somehow infer or not even infer, to state that somehow there is something dishonest or phony or not - - that these documents are to be disregarded is pure nonsense.

I object to Counsel saying it, I object to Counsel's inference.

If he wants to cross examine the

witness, let him do it, but don't sum up on cross examination.

I think it's - - Counsel knows it's improper.

He is trying to do something he can't do directly.

THE JUDGE: LEt's get on with the case without further argument.

We have Exhibits "1", "2" and "3".

Do you want to offer the work-sheet or not?

MR. CRANER: No, I do not. This is my witness.

(The above described documents were marked Debtor Exhibits "1", "2" and "3" In Evidence, as of this date.)

EXAMINATION BY MR. CRANER:

Q Referring to Debtor's Exhibits "1", "2" and "3" In Evidence, did you sign these tax returns?

A Yes.

Q Were they prepared by an accountant?

A Yes.

Q Certified Public Accountant?

A The firm was certified, yes.

Q Did you swear that under penalty of perjury that these statements are true and accurate?

A They are true and accurate.

Q Have you examined these statements?

A Yes.

Q Is there anything inconsistent about any item in these statements as to inventory, beginning or closing inventory?

A No.

Q I ask you to look at Exhibit "1", "2" and "3" In Evidence.

Can you tell us the net profit or loss for the years ending October 31, 1970, October 31, 1971 and October 31, 1972 (handing)?

A For the year ending October 31, 1970, we had a net profit of $15,796.78; for the year ending October 31, 1971 we had a net profit of $15,639.57 and for the year ending October 31,1972 we had a loss of $86,371.93.

Q Can you give us the date that you filed the return for the period ending October 31, 1972?

A 7/15/73.

Q Did you get an extension by the Government to file the return late?

A Yes, we did.

Q Have you filed a return for the fiscal year ending October 31, 1973?

A No, we didn't.

Q Have you gotten an extension to file that?

A Yes, we did.

Q Yesterday on Mr. Klein's request and upon the Judge's directive, did I ask you to bring in whatever documents you could get that are relevant to this proceeding?

A Yes.

Q You also included this worksheet, is that right?

A Yes.

Q At that time did you even look at this worksheet?

A No.

Q You just produced it according to the Judge's directive.

Do you know if this worksheet is accurate?

A No.

Q Do you know if this worksheet has ever been presented to any Governmental body or the Internal Revenue Service as a return?

A No.

Q Have you ever relied upon this worksheet?

A No.

Q In fact, do you know if this worksheet is complete in any way?

A No, to be honest.

Q You were asked on cross examination to look at your tax returns and say how much of your wages would be attributable to Local 455 workers.

Could you estimate what percentage ofyour total wages would be allocated to Local 455 people and what percentage of your wages, I know you are approximating, would be attributable to other workers, shop workers?

MR. KLEIN: I object, I asked the same questions and he said he couldn't answer.

MR. CRANER: We'll see if we can get an answer.

Maybe I can ask the question better.

THE JUDGE: I will allow the question, objection overruled.

A Well, since we had on the average of fifteen to sixteen people over a year period and we had on the average of two people outside, percentage-wise I would figure that would be close.

Percentage-wise, I don't know what that would come up to.

Q Is there a tremendous discrepancy between the wages that the outside people would get or one of the outside people would get individually and what the people on the inside are getting?

A Well, we average - -

MR. KLEIN: Objection, leading.

THE JUDGE: Overruled.

A The average would be, as I stated, was

$7.27 for a shop man.

The average for the outside, with benefits, came up I think to around $9.00 and change.

Q Would it be fair to say then that the significant percentage of your wages would be to the Local 455 people?

A Yes.

Q And that the wages to the outside people who are included in these tax returns would be relatively minimal based on the whole picture of all wages paid, is that right?

A Yes.

Q If the Judge were to do the arithmetic, he could probably, in fact, figure out the exact percentage, is that right, or just about?

A We could approximate.

Q Do you have a loan from the Small Business Administration?

A Yes, I do.

Q Can you tell this Court whether you have been paying this loan?

A No, I haven't.

Q When was the last time you paid the

loan?

A March of 1973.

Q Could you tell this Court why you didn't pay the loan?

A Well, to be honest with you, I couldn't afford to pay the loan because of the loss of dollars that we found out at the end of the year, plus the fact that I went to the bank and asked them for an extension for a year.

Q Was this granted by the S.B.A.?

A Yes.

Q And the bank?

A Yes.

Q Was this based upon the presentation you made as to your economic plight?

A Yes.

Q Did they investigate your economic plight before they granted this?

MR. KLEIN: I object to this as hearsay.

THE JUDGE: Sustained.

Q Have you been making your payments on the Thomas Punch machine?

A No.

Q When was the last time you paid for the lease on the Thomas Punch machine?

A We still owe a payment from August.

Q Do you owe money on trucks that you rent?

A Yes.

Q Is there an application before this Court to reclaim these trucks?

A Yes.

Q Could you tell the Court how much you owe on the trucks?

A In back payments?

Q Yes.

A $750.00 a month times I think it's seven months now.

Q What would happen if the trucks were taken away from you?

A If the trucks were taken away from me right now?

Q Yes.

A Well, it would be a loss to me a nd I would have to go into the open market to rent trucks.

Q Do you have money to rent these trucks?

A No.

Q What would happen to you if the Thomas Punch machine were taken away from you, as there is a proceeding in the State Court?

A Well, it would hinder our production.

Q Wouldn't this put you out of business?

A It would closely put us out of business, not in its entirety. I could make railings.

Q There was a question on cross examination that the reason why you are trying to get this contract set aside is because you are having a personal fight with the union and you want to get the union out.

Now, I want you to tell the Court, is this true?

A No, it is not.

Q Can you tell this Court why we are here today and what is this proceeding about?

What is your motive of getting this contract terminated and discharged?

A My motive is that I cannot live with the

terms of the contract at this particular time.

If I was subjected to them that I would have to personally go out of business.

Q Isn't it true - -

THE JUDGE: Which terms do you say you can't live with?

THE WITNESS: Well, it's the dollar amount.

It's the total wages that I have to pay the men, plus fringes.

Q Isn't it true that the reason why - - isn't it fair to say that the reason why you are behind on this Thomas Punch machine payments and the reason why you are behind on your rent and the reason why you are behind on your rental of the trucks and the reason why you don't have money to buy steel to stay in business is because you have lost money in the last fifteen or twenty months, approximately the last year such that you don't have the cash to pay for these items?

A That is correct.

MR. KLEIN: I object.

THE JUDGE: Sustained. The

answer shall be stricken.

The question was classicly leading.

Q Can you tell this Court why if there is any reason you are behind in your payments as you have set forth?

MR. KLEIN: If Your Honor please, I am going to object, the cat is out of the bag.

MR. CRANER: I will rephrase the question.

THE JUDGE: I am going to allow the answer, objection overruled.

A State it again.

(The question was read back by the Reporter.)

A Yes, because in 1972 I lost a tremendous amount of money and my business is not able to continue because of the loss of money.

THE JUDGE: Since Counsel has intimated in the Brief, particularly the Brief filed by the N.L.R.B., which Counsel has adopted to some extent that

perhaps the entire contract should not be set aside and only that portion which would preclude an arrangement of a successful Chapter XI plan and if, in fact, that portion relates to the wage requirement, could you live with the rest of the contract other than the wage requirement?

THE WITNESS: You are asking me that question?

THE JUDGE: Yes.

THE WITNESS: When you say the rest of it, most of it is really the wages, the wages of specific mechanics, all laborers, finishers, the welfare, the pension, the holidays. This all has to do with wages.

THE JUDGE: The reason I ask is that I have not seen the contract.

THE WITNESS: Nor have I.

THE JUDGE: It's not an Exhibit.

MR. CRANER: As far as we can determine, the National Labor Relations

Board ordered that we were to enter into a contract with the union.

That's in the decision that's annexed.

The reason why I annexed the decision was to present to the Court exactly what we are trying to set aside.

THE JUDGE: You want to set aside an executory contract.

MR. CRANER: Well, yes.

THE JUDGE: The contract signifies an agreement consented to by both parties.

Is there such an agreement that is the subject of being set aside?

MR. CRANER: As far as we can determine, the agreement that we are trying to set aside is a continuation of the agreement that had been existing.

The contracts that Mr. Palatnik has negotiated with the union have been association contracts, which we are told that this is what everyone within this

area has to pay and that we go along with.

THE JUDGE: I want to be clear, because as of the posture of this case, I have not seen any contract that I can study and determine whether or not it can be set aside.

MR. CRANER: The closest we can come is the 455 - -

THE JUDGE: It's not my burden to present a contract. You are asking that a contract be set aside.

I first have to see the contract.

MR. CRANER: We have been ordered by the National Labor Relations Board to enter into a contract with the union.

The executory contract that we would enter into with the union which we would have to comply with the union, would be the contract that the Local 455 gives to all the shops in the area.

So I don't think there is a problem and I think it would be conceded by

Local 455 that the contract that they would enforce upon Mr. Palatnik would be its standard contract.

It is this that we have been ordered to enter into and it is this that we are asking the Court to set aside.

THE JUDGE: What bothers me is how I can set aside a contract that you have not yet entered into.

MR. CRANER: Well, we have been ordered, we have been told that we have to enter into it.

THE JUDGE: I will proceed, but the case has not yet been - - all the evidence has not yet been submitted.

But this is the question that is bothering me.

MR. CRANER: Well, the Board has ordered that we are to enter into and we are required by the Administrative Judge's Order to enter into this contract.

THE JUDGE: How do you go about

entering it? - - You sign it, right?

MR. CRANER: We have been given no contract but the dispute - - the contract - - it's not as if we then go out and negotiate a new contract.

There is a document that I think that all sides would agree we would have to enter into, the executory contract, which is a standard document which Mr. Palatnik would have to sign.

If he doesn't sign it, there is no contract.

That's what the dispute is about.

THE JUDGE: Mr. Klein, are you going to offer that standard contract?

MR. KLEIN: Yes, we are prepared to offer the contract that we want - - that under the terms of the Order of the Administrative Law Judge of the N.L.R.B. that we would want Mr. Palatnik to sign on behalf of his company.

THE JUDGE: I don't want to jump the gun as far as evidence but at this

stage I have not seen any contract.

MR. CRANER: We can offer that as a joint Exhibit.

Q What you ask the Court to set aside is all economic aspects of that contract, is that right?

A That's right.

MR. CRANER: That would be in answer to Your Honor's question.

Q You were also asked whether or not you had complied with the Order of the National Labor Relations Board or the Administrative Judge.

You were asked that question, is that right?

A Yes.

Q Have you complied?

A No.

Q Can you tell the Court why you haven't complied?

A From what I understand, we are appealing the case.

Q Also, are you economically able to comply?

A No.

Q That's why you haven't complied with the contractual aspects of this, is that right?

A That is correct.

MR. CRANER: I have no further questions.

THE JUDGE: Are you finished with this witness?

MR. KLEIN: For the time being. I think I have just one question.

EXAMINATION BY MR. KLEIN:

Q At the close of your direct testimony yesterday, that's when you were questioned by Mr. Craner, you stated something which I copied down that certain companies were interested in investing but were reluctant to enter into any agreement with you, so long as Local 455 has any contract with you. Now, did I misunderstand your answer?

A I don't think so, no.

Q In other words, if 455 has anything to do with your operation, even under different terms, these people are not interested?

A I don't know, I'd probably rephrase that and say due to the economic conditions of the contract.

Q It's certain that you have no desire to remove Local 455 as the collective bargaining agent of the employees in your shop?

A No, I have no desire.

MR. KLEIN: I have no further questions of this witness.

EXAMINATION BY MR. CRANER:

Q Isn't it true that even if the contract is set aside that Local 455 is still the collective bargaining agent?

MR. KLEIN: Objection.

THE JUDGE: Your objection is sustained, don't answer it.

Q Do you know if Local 455's contract is set aside, whether or not it will still remain as a collective bargaining agent?

A Yes.

MR. CRANER: Thank you, I have no further questions. That's the case for the Debtor.

MR. KLEIN: I move to dismiss at the close of the Debtor's case - -

MR. CRANER: Other than I understand that the Local 455 contract will be offered.

I think for clarity it should be offered at this point before any applications are made, as a joint Exhibit, if you like, or I will offer it.

MR. KLEIN: If you have it, fine.

MR. CRANER: No, I believe you consulted with the President of the union and he said he had it.

MR. KLEIN: My motion is not addressed to the fact that you don't have the contract physically before you.

THE JUDGE: Let's hear your motion.

MR. KLEIN: My motion is really on the basis that there has been no showing here that the employer can continue a viable operation even if the relief is granted.

He has produced no plan at all,

he has produced no testimony by any expert of any kind that the operation will be successful if it is run.

He has run it his own way since February and he has, according to his last testimony on redirect examination, he has not been able to make payments of his loans since March of 1973; he has not been able to make payment on his trucks for the last seven months, all of which has occurred during the time he has been running his business on his own and in his own way.

I submit there has been no showing even under the criteria of the Bankruptcy Act, without any reference to the N.L.R.B. and the N.L.R.A. overtones, that he has made any showing sufficient to carry the burden that he has that proving that the cancellation of the economic features of this contract would in any way enable him to survive.

The record is confused, the tax

returns are confused, they can't explain a major discrepancy with regard to the difference between the statement for the period ending - -

MR. CRANER: I don't think there should be any reference to something not In Evidence in terms of argument.

THE JUDGE: I will allow Counsel to complete his argument.

MR. KLEIN: Your Honor, I think there was a pending motion that I made for this document to be admitted and under the same terms and conditions as the three tax returns.

I don't think you ruled on that.

THE JUDGE: You said you may offer it yourself.

MR. KLEIN: I can't offer it as an Exhibit and vouch for it.

I can't because I believe the whole thing is a farce.

MR. CRANER: It's not offered.

THE JUDGE: You can offer it for

whatever worth it has.

MR. CRANER: That's why I didn't offer it.

I think you are deliberately - - I gave you that document, I gave you everything we had.

I think you are deliberately trying to twist it around and saying we are saying it's accurate.

We are not. Let's make that very, very clear.

THE JUDGE: Excuse me, Counselor, I do not wish to have argument within argument.

I want that to be understood. You have done it several times.

MR. CRANER: I'm sorry, Your Honor, I apologize.

THE JUDGE: I wish you to control your emotions.

You are not helping your case. I wish you to show the same courtesy to Counsel that he has shown to you.

MR. CRANER: I apologize to Counsel and to the Court.

THE JUDGE: Mr. Klein, would you proceed.

MR. KLEIN: I would ask that this be admitted for the limited purposes - - in order to complete the picture with regard to the documents that were admitted over my objection.

THE JUDGE: Let it be marked as Exhibit "A", Respondent's Exhibit "A", for whatever it's worth.

(The above described document was marked Respondent's Exhibit "A" In Evidence, as of this date.)

THE JUDGE: Have you completed?

MR. KLEIN: Essentially. That there is just - - there has just been no showing of a bonafide effort to produce a plan here.

The only contract of all his obligations that he seeks to have set aside is this one contract.

If this were an application that had been made in good faith, then we would expect to see a wholesale reduction of obligations under all existing contracts.

I just don't believe the Debtor has met his bankruptcy burden at this point, let alone the burden of showing in view of the outstanding obligations of the Order of National Labor Relations Board Administrative Judge that you consider granting this motion.

THE JUDGE: Decision is reserved and put on your case.

MR. CRANER: For the record, may I pose a motion. I would like to put our arguments on why it should be rejected for your consideration.

THE JUDGE: I reserved decision. I want to hear the Respondent's case.

MR. CRANER: Thank you.

MR. KLEIN: I would like to call Mr. William Colavito at this time.

WILLIAM COLAVITO, Called as a witness, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY THE JUDGE:

Q What is your full name?

A William Colavito.

Q Where do you live?

A 3000 Bronx Park East, Bronx, New York.

EXAMINATION BY MR. KLEIN:

Q What is your occupation at the present time?

A I am the President of the Local Union 455. President of the Iron Workers, Local 455.

Q How long have you been affiliated with Local 455 as an officer of the union?

A Ten years.

Q Prior to that, what was your profession?

A Iron worker.

Q How many years have you been an iron worker?

A Forty years.

Q How old are you?

A Fifty-seven.

Q When you say an iron worker, what kind of iron worker were you before you became an officer of the union?

A Well, when I say iron worker, it includes almost anything in the metal fabricating business.

It includes architectural metals, miscellaneous iron, ornamental iron and structural steel.

Q In the course of your experience, have you served as a finisher?

A Yes.

Q And as a mechanic?

A As a foreman also.

Q As a foreman, as well?

A Yes.

Q Are you familiar with the operations of the Debtor as they were before February of 1973?

A Yes, I organized the shop so I pretty - - I know the history of this company.

Q When did you first organize his shop?

A 1968.

Q At that time did you have organized a number of shops which were members of an association?

A Yes.

Q What is the name of that association?

A The Allied Building Metal Industries.

Q Did you have an existing contract with that association?

A Yes.

Q What was the geographical area in which that association had members?

A Within the geographical area of the local union, which goes up to Poughkeepsie right now, that the further east we have a shop, the end of the Island and we have some shops in Jersey.

Q How did your initial contract with the Debtor compare to the contract that you had with the association at the time you organized the shop?

A It was much lower, we had about six employees, we had a medical benefit prrgram, a sick day program.

His wage rates were lower and they were brought up on the basis of the next two years.

In other words, they were brought up little by little within the two year period.

Q So at the end of your first contract with him he was even with the association?

A Yes.

Q When was that, approximately what year?

A 1970, I guess; maybe a little prior.

Q In 1970, when you negotiated - - did you negotiate the contract with him in 1970?

A Yes.

Q Did he ask for any wage relief below the wages that were being paid to the association - - by the association shops?

A Well, as far as the contract goes, all the wage rates and classifications and fringe benefits were the same.

He raised no qualm about those. There was an agreement by the association, all the other employers, to give an early increase for six months

at twenty-five cents and that was the only thing that he raised objection to and that was settled after a week or so.

Q You settled that with him?

A Yes.

Q During the life of the contract from '70 through - - how many years was that contract, if you know?

A Three years.

Q It expired when? - - In June?

A June 30, 1973.

Q During the life of that contract, was he paying the same wages in hours and fringe benefits as the association members?

A Yes.

Q In 1973 you had some troubles with the shop, is that correct?

A Yes, in the early part of the year.

Q What difficulties did the union have with the shop?

A He was delinquent in contributions to the pension and welfare fund which covered the men and - -

THE JUDGE: He what?

A He was delinquent in the contributions in '72 and there was discussions and finally there were no results and finally in '72 - - in '73, February, there was a strike.

He was given notice and the men were pulled out.

Q Under your collective bargaining agreement, is it permissible to strike if contributions aren't made to the fund?

A Yes, it is.

Q How long did the strike last?

A I believe at least a week.

Q Were payments ultimately made?

A Yes, I think he made part payment after the first couple of days and then the balance was paid within a week's time.

Q After he made payments, were the men returned to work?

A No, the men were not called back to work.

Q What happened at that point?

A He sent us letters - - a letter saying that he would only take one man back and the rest, he had no work and the rest would be laid off.

Q The one man he was prepared to take back, was he the most senior man in the shop?

A No, from the work that was in the shop that had to be fabricated, we have a classification system, he was not going according to the contract.

Q You had a seniority clause in the contract?

A That's right.

Q You had a layoff clause in the contract, as well, is that right?

A Right.

Q Did he exercise his prerogatives under the layoff clause?

A I don't know what you mean.

Q Did he comply with the layoff clause?

A No, he did not.

Q Did you have any discussions with him in order to - - in an attempt to resolve this problem?

A Yes, I called and we arranged some meetings and we had some discussions starting in March, probably.

Q We don't want to retry the N.L.R.B.

case here, that's already been fully tried, but briefly what were the points that he raised with you during these discussions?

A Well, the main point was that we had to get rid of the steward.

Q Would you amplify that?

A In the course of discussion on that he raised additional points that he was finding it economically difficult because he wasn't getting the production of the men in the shop.

One of the reasons for that cause was the steward, the steward was trying to live up to the contract and he found it very difficult and he got rid of the steward, otherwise he couldn't have his problems solved.

Q Did he ask you for any wage relief or fringe benefit relief in connection with the terms and conditions of the contract that was due to expire on June 30, 1973?

A No, he talked about the future in terms that if he would ever get back into production it would be on the basis of trying to get a contract with a lower - - with lower wage rates.

Q When did he first raise with - - I am talking about approximately what point in time did he first bring up with you the question of getting a lower rate for the '73 contract?

A I would say in April, May of '73.

Q Was any agreement reached with you regarding providing him relief in connection with the post July 1, 1973 contract?

A Well, we eventually worked out an agreement which allowed him to - -

MR. CRANER: Can we have that question read back?

THE JUDGE: All right, read back the question.

(The question was read back by the Reporter.)

A (Continuing) - - I don't know if you would call it relief, but on January 30, 1973, all the contracts expired.

The association which is comprised of some 75 shops and the balance of the industry, altogether about 100 shops, all independent shops like himself, about another 100 shops that were like independent,

they expired on June 30, '73.

Those contracts were being negotiated. The agreement was worked up that we would extend his contract and adopt whatever benefits were negotiated with the other shops, what we call industry shops, but he would be permitted to work pending that negotiation.

If the other shops struck he would be permitted to work so if you want to call that relief, that's relief.

In other words, he could continue working while we were negotiating with anyone. If we had to go on strike, he could continue working.

Q With whom did you reach that agreement?

A Bob Palatnik.

Q You personally negotiated this with him?

A Yes.

Q Approximately when did you reach that agreement?

A The end of May, beginning of June, something like that - - the end of May probably.

Q Was this agreement ever reduced to writing?

A Yes, it was.

Q Did he ever sign the writing?

A No, he never did.

Q What happened after the agreement was reduced to writing?

A It just never got signed. It went to his lawyers, his lawyer okayed it.

His lawyer had a consultation with our Attorney in terms of the language of it.

MR. CRANER: I object to that.

THE JUDGE: Sustained.

Q You had reached agreement with him?

A Oh, yes.

Q Did you have personal conversations with his lawyer?

A I did, too.

Q You did, too?

A Right.

Q Was any objection made to the economic terms of the contract?

MR. CRANER: I object to any

conversations made between this witness and someone who is not present.

THE JUDGE: Sustained.

MR. CRANER: It's hearsay.

Q At any time were there any objections raised to the economic terms and conditions?

A Neither he or anyone else raised any objections to the economics of the contract.

MR. CRANER: I move that the statement anyone else be stricken.

THE JUDGE: I will sustain your objection and limit it to whether Mr. Palatnik raised any objections.

Q Did Mr. Palatnik raise any objections to the economics?

A No, he did not.

Q Did the men return to work?

A No, never.

Q What was the problem?

A He didn't sign the contract and at the end of June - -June 30th, there was no contract.

Q Were there other issues that were still unresolved between you?

What were those other issues?

A We had arbitrations under the old contract, if that's what you mean by issues and they are still pending.

Q Was there a continued insistence by him with regard to the Chief Steward?

MR. CRANER: Objection to the form, the witness is being led.

THE JUDGE: Sustained.

Q Was the question of the restoration of the Chief Steward ever resolved?

A No, it was not. In fact, the basis for the last reason he gave for not signing was because the Chief Steward was observed watching the shop on a Saturday prior to a meeting with - - a meeting we were going to have with him and his Attorney.

Q Are you familiar with the kind of work that the shop does based upon your observation of it over the years?

A Yes.

Q Can you describe for us what kind of work it does do in terms that we can understand?

A Well, when we first organized him, he did

mainly what we call miscellaneous irons and railings, a little bit of structural steel, very small.

After the contract, after we organized the shop he grew into a structural steel shop to a great extent.

He put on an additional building, which was much larger than the small place he had and he was performing mainly structural steel.

Q What is structural steel, is that the big column that go into buildings?

I have no idea what it is.

A Yes, it is large steel sections shaped as you would call columns or beams which is brought into the shop, ordered, stored within the shop and stacked in such a way that they don't tumble over because they are very dangerous.

The work has to be laid out on that, holes are punched into it, pieces are welded into it, the material is cut and burned and assembled, stacked somewhere ready for shipment and then loaded again for shipment to the job site.

Q What kind of skills are required to perform such work?

A Loading and unloading steel because of the fact that it has to be done carefully because it's very, very heavy.

Laying it out requires reading of drawings, understanding sequence of operations. After it is laid out, holes may be marked or parts may be marked for cutting or burning to cut down the size.

Then they are taken over to the various machines for cutting or burning or punching.

Then grinding and welding of members to them. Parts are assembled at a prefabricator from before and then stored, moved out and stored again.

Q You heard testimony yesterday from Mr. Palatnik as to the manner in which he has been and has been considering operating his shop.

Based upon your experience in the industry and your knowledge of the industry, can a shop be operated profitably in such a manner?

MR. CRANER: Your Honor, I am going to have to object to the question, the form of the question.

What is the witness talking about, whether Mr. Palatnik can operate

the shop with four people now, whether he could have operated it last year with twenty people paying union wages? - - I don't know how this question can be properly answered.

THE JUDGE: I am going to sustain your objection because it's vague.

Q Do you recall what Mr. Palatnik testified to yesterday as to the manner in which he proposed to operate the shop?

MR. CRANER: I object, I think there is no testimony on how Mr. Palatnik proposed to operate the shop.

What Mr. Palatnik wants to do is propose a plan to this Court so he can properly operate the shop.

THE JUDGE: He testified as to how he is operating.

MR. CRANER: Presently, yes.

Q Do you recall the testimony of Mr. Palatnik as to how he was operating the shop presently?

A You mean with the numbers of people?

Colavito

Q Yes.

A Is that what you are talking about, manner?

Q Yes.

A The size of the shop is large for that small group of workers.

If he was working on small stuff like railings or small items, I can see four men working.

If he was running strictly a structural shop, it would mean everyone would have to be involved in all skills of the shop.

If there were any unskilled people they would be hanging around while skilled people would be performing some operations.

So it would not make sense in any way, in my experience, for a small group to operate a large volume of business.

MR. CRANER: I object, it's a purely speculative answer.

THE JUDGE: I will allow it for what it's worth.

Q Based upon your knowledge and experience, based upon your knowledge of the industry,

does this shop compete with the other shops with which you have contracts?

A It does.

Q In what manner is there such competition?

A The way he receives invitations to bid, other shops do, too.

They all have certain connections with certain contractors, of course, but we have some 175 I would say what we call in the industry contract.

He has shops a few blocks away from him, a half mile or so away from him, he has shops - - we have shops in that area, we have shops that are in different areas that have been bidding and doing work in that area for a long period of time.

They all contribute to the various funds, they all have the same rights of privilege - - the same rates of pay and where a shop is located, it doesn't necessarily mean he does that work in the area where he is located.

We have shops as he has done, worked in New England, Pennsylvania, New Jersey, so forth.

Q He mentioned certain shops which do not - - he mentioned one shop which does not have the same contract as he does.

I think that was Poughkeepsie Iron Works?

A Yes.

Q Tell us why Poughkeepsie has a lower rate than the association?

A It is our first contract with Poughkeepsie Iron Works.

Q In other words, Poughkeepsie is getting the same chance to catch up as the Debtor did when you made the first contract with him?

A Yes, he - -

MR. CRANER: Objection, I think the witness is being led again.

I move that the answer be stricken.

THE JUDGE: Let it be stricken.

Q When did you first organize Poughkeepsie?

A We first negotiated with Poughkeepsie in 1971, I believe.

Q When will he catch up to the as-

sociation?

A His contract expires in '74.

Q He mentioned certain other shops such as Monsey Iron Works and Liberty Iron Works.

A I remember.

Q You remember them?

A Yes.

Q Tell us.

A Monsey Iron Works is a shop in business about a year, less than a year. He makes smaller stuff like railings.

He couldn't - - I don't think he has more than two workers, if he has that many. Liberty Iron Works has one worker.

The one upstate, Fallsburgh, has no workers right now and when it has workers, it has one or two workers.

Rockland Iron Works is a family affair, a father and son or two and he also did some small alteration repair work.

I don't know if any of them outside - - if they take on a number of workers, like Fallsburgh a number of times, that would get anywhere in the

$25,000 contract range.

They are all small repair kind of shops.

Q Your current contract expires at the end of when?

A '75, the end of June 30, '75.

Q Do you have available with you a copy of the provisions of the contract which the National Labor Relations Board Administrative Law Judge has directed be signed by the Debtor?

A Well, we drew up a stipulation which was an extension of his past contract and which committed him to pick up whatever benefits were negotiated in the new industry contract and which would also permit him to work if there was a strike during that period of time.

We have a stipulation to that effect.

Q Do you have a copy of that here with you?

A Yes.

MR. KLEIN: I would like to have that marked as our next Exhibit.

Would it be possible to put the accountant on before we break for

lunch?

THE JUDGE: If Counsel has no objection.

MR. CRANER: I have no objection to that.

B E R N A R D W E R N E R, Called as a witness, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY THE JUDGE:

Q What is your full name?

A Bernard Werner.

Q Where do you live?

A 15 Van Meter Fenway, New Rochelle, New York.

EXAMINATION BY MR. KLEIN:

Q What is your occupation?

A I am a Certified Public Accountant.

Q Do you also teach?

MR. CRANER: I will stipulate that the witness, if he is a Certified Public Accountant, that he is an expert in accounting.

Q This morning at my request have you come up here and looked at various documents that were produced by Counsel for the Debtor?

A Yes.

Q About how many minutes did you spend looking at them?

A About fifteen minutes.

Q I show you a document which has been marked Debor Exhibit "1", the income tax return for the period November 1, '71 through October 31, '72 (handing).

I ask you whether or not you called my attention to an entry on Page 4 of that document?

A Yes, I noted that the closing inventory as shown on the return as of October 31, '72 was $106,658.30.

Q Did you notice anything in connection with the entry itself?

A Well, I mentioned to you that there had been an erasure of the figure.

MR. CRANER: I object to that. Is the witness going to testify that this document is not accurate or

this document has been tampered with?

THE JUDGE: I will allow the testimony, objection overruled.

Q Can you tell us which figures had been erased?

A There is - - the figure that I mentioned before, the $106,658.30 shows an erasure underneath to me.

Q Is it underneath all of the figures or just some of the digits?

A Probably all of the figures.

MR. CRANER: I am going to object to "Probably".

Either it is or it isn't.

I don't know what that means.

THE JUDGE: The document speaks for itself.

MR. CRANER: Sure, it's In Evidence, it's In Evidence.

Q Did you also call my attention to a figure on Respondent's Exhibit "A", which is a document entitled, "Statement of Income Profit and Loss Three Months ending 1/31/73"?

MR. CRANER: I object to the form, did you call my attention.

Let the witness testify as to what he has to say.

THE JUDGE: Objection sustained. Do you want to rephrase it.

Q Have you looked at the inventory figure contained on Respondent's Exhibit "A" (handing)?

A I looked at the inventory figure which was as of the opening of business on November 1, '72 for the income statement.

It showed $210,078.57.

Q How does that compare with the figure shown as of the close of business on the preceding day, October 31, 1972?

A Well, in accounting for inventories, normally the opening inventory as of the beginning of the next period should be identical with the closing inventory for the preceding period.

In this case there is a difference of nearly $104,000.

Q Now, I want to ask you what we

lawyers call a hypothetical question, sir.

If the opening inventory on Exhibit "A" which is the period of three months ending - -

MR. CRANER: May I make an objection?

THE JUDGE: Let the question be finished.

Q (Continuing) - - October 31st - - if the figure listed as the opening inventory on the Respondent's Exhibit "A" were substituted for the closing inventory for October 31, 1972, on Debtor's Exhibit "1", what would the effect be on the profit for the year ending October 31, 1972?

A The tax return shows a loss for that year but had the inventory of $210,078 been substituted for the closing inventory on the tax return, the profit would have been - - the tax return would have shown a profit of approximately $18,000 for the year.

Q Conversely, if the closing inventory as shown on Debtor Exhibit "1" were substituted for the opening inventory on Respondent's Exhibit "A", what would the effect be on the profit or loss

as shown on Respondent's Exhibit "A"?

A Exhibit "A" shows a loss for the three months of approximately $83,000.

Had the opening inventory been the same as the closing inventory on the tax return that was referred to, there would have been a profit for the three month period of about $21,000.

MR. KLEIN: I have no further questions of the witness.

MR. CRANER: I just have a few questions.

EXAMINATION BY MR. CRANER:

Q I watched you this morning when you looked at the documents that I gave to Counsel.

How long did it take you to look at the inventory and to see this discrepancy between the worksheet and the last tax return inventory, eight seconds, ten seconds?

A Approximately.

Q Eight or ten seconds?

A Yes.

Q So it would be a rather unsophisticated, almost foolish attempt to somehow

palm off Respondent's Exhibit "A" In Evidence as accurate figures, wouldn't it?

MR. KLEIN: I object to the form of the question.

MR. CRANER: It's cross examination.

THE JUDGE: I will allow it, objection overruled.

I will allow it for whatever it's worth.

THE WITNESS: It would be - - it's very obvious to any accountant.

Q Did you examine the inventories, the opening and closing inventories and the three tax returns that the Debtor put into Evidence?

A After I saw the discrepancy here I looked at two of the others, yes.

Q Did you see any inconsistencies?

A On the tax returns, as far as - - I hadn't looked for - - what is your question, as to the inventory?

Q Opening and closing inventories?

A Opening and closing inventories, no, ex-

cept for this one.

Q You answered a hypothetical question.

If the inventory in Respondent's Exhibit "A" were such an amount, then this would affect profit and losses for the period ending 1972?

A It would affect the profit for the period ending October, '72 or for the three months ending January, '73.

Either one of them would have to be affected.

Q Either one, is that right?

A That's correct, depending on which is the correct inventory, the $210,000 or the $106,000.

One or the other has to be wrong.

Q If, in fact, the creditor had no idea whether or not this was accurate or not, you of course would have no basis?

You are just going by what's on the worksheet, is that right?

A As far as the inventory, I said that one or the other - - it either has to be $106,000 or $210,000, it can't be both at the same date.

If it were $210,000, then the year ending October, '72 would have a profit.

If it were $106,000, the three months ending January, '73 would have a profit, one or the other.

Q Wouldn't this be caught up someplace if he used higher inventory - - rather a lower inventory in the '72 figure, wouldn't it ultimately have some effect on the closing inventory at the end of '73?

A It wouldn't have any effect on the closing.

Q No effect at all?

A No.

Q You have no idea, you answered a hypothetical question and to you it's a hypothetical question because you have no idea whether or not the opening inventory for the period in which the Exhibit talks about is accurate, is that right?

A I don't know which is the correct inventory figure, no.

Q You use worksheets, don't you?

A Yes, of course.

Q Do you have clients who have con-

trollers or bookkeepers work up figures that you ultimately as the accountant work with, that's not unusual, is it?

A That's right.

Q Mistakes are made in your experience sometimes aren't they?

A Oh, yes.

Q Quite often, aren't they? - - That's why there is a C.P.A. that comes in to make sure everything is done right, isn't that the right way?

A Mistakes are made at times, yes.

Q So it isn't an unusual procedure, is it, to have a controller or a bookkeeper or whatever you call it start to work up numbers, isn't that right?

A That's not unusual.

Q Also, have you ever seen returns that are filed, in fact, that you have filed that you have erased or in any way changed the numbers on a tax return and filed it with Internal Revenue Service?

That's not unusual either, is it?

A Erasures are made, yes.

Q That doesn't mean that the document is in any way - - in fact, you filed documents with erasures on it without in any way feeling that in doing it you were doing anything fraudulent or dishonest, isn't that right, in your own experience?

A Yes, yes.

Q So then it wouldn't be a remarkable situation or a highly unusual situation to file a return with erasures, is that right?

A Yes.

MR. CRANER: I have no further questions of this witness.

EXAMINATION BY MR. KLEIN:

Q Does a C.P.A. take inventory?

A A C.P.A., if he is doing a certified audit, will be present at an inventory taking.

He will not take the inventory himself as a rule. The client takes it and the C.P.A. is present to see that it's taken in the proper procedure.

Q Is that as part of a certified audit?

A As part of a certified audit, yes.

Q If there is an uncertified audit, which is what the testimony was in this case yesterday, will a C.P.A. participate in the taking of an inventory?

A Generally not.

Q Does the amount stated as the inventory have an effect on the profit and loss for the period of time?

A Of course.

Q In other words, whether or not there can be a profit or loss really depends - - may, in fact, depend upon the inventory?

A It does, yes.

Q At this time you can't even tell us whether or not either figure is a correct inventory?

A No.

MR. KLEIN: That is all, I have nothing further.

EXAMINATION BY MR. CRANER:

Q You can't tell us whether either figures are correct inventory either, is that correct?

A That is correct.

Q Also, Mr. Palatnik testified yesterday that he takes a physical inventory at the end of his calendar year.

Isn't that the way it's usually done?

A The end of the fiscal year.

Q Yes, which is October 31st, yes.

A Yes.

Q So it wouldn't be unusual that any worksheet for the first quarter of the fiscal year wouldn't be a fiscal inventory and can be kind of an estimate?

A You are talking about the opening inventory here, which was a fiscal inventory.

I presume the Internal Revenue requires that you take an inventory at the end of the year which would be the opening inventory for the three month period so that must be a physical inventory.

Q They have to be the same amount, isn't that right?

A Right.

Q This is a very obvious thing, isn't that right?

A Right.

MR. CRANER: I have no further questions of the witness.

MR. KLEIN: I recall Mr. Colavito to the stand.

W I L L I A M C O L A V I T O, Recalled as a witness, having been previously duly sworn by the Notary Public, was examined and testified as follows:

THE JUDGE: You were previously sworn and your testimony will continue under oath.

THE WITNESS: Yes.

EXAMINATION BY MR. KLEIN:

Q When we interrupted you, you had submitted a copy of the agreement that you had worked out with the President of the employer.

I was about to ask that it be marked as the Respondent's next Exhibit.

MR. CRANER: Are you referring to that as being offered In Evidence?

MR. KLEIN: Yes.

MR. CRANER: I object to that.

This is an agreement that was not signed, we will object to the admission of this.

THE JUDGE: This is not a signed agreement?

MR. KLEIN: This is the agreement that Mr. Colavito testified was worked out with the employer but the employer refused to sign.

THE JUDGE: I will allow it, Exhibit "B".

MR. CRANER: May I inquire of the witness?

THE JUDGE: On the voir dire, sure.

MR. CRANER: Yes.

EXAMINATION BY MR. CRANER:

Q When do you say this alleged agreement was worked out with Kevin Steel?

A The end of May.

Q Who typed this document?

A Our Attorney.

Q It is also your testimony that it

is neither signed nor dated, is that right?

A That's right.

Q Did you ever send a copy to Mr. Palatnik?

A I handed him a copy, a copy was sent by our Attorney to him and his Attorney.

Q I can't hear you.

A I handed him a copy, a copy was sent to him and a copy was sent to his Attorney.

Q Do you have the covering letter sending this to Mr. Palatnik?

A I don't, our Attorneys may have. But I gave him a copy in person also.

Q Can you tell this Court why this agreement isn't signed?

A Sure, if you want me.

Q Yes.

A Sure. The last time I had a discussion with him on it he says, "I will not sign this agreement until you get rid of the steward".

That was the reason.

Q It is your testimony then that Mr. Palatnik never signed this?

A That's right.

MR. CRANER: Your Honor, I object to the admission of a document that is not signed by the Debtor in Possession.

I think to introduce a document that is not signed is totally improper and certainly contrary to the law of evidence.

It's a self-serving document, and I can't understand under what basis or foundation it could be admitted.

There is no testimony, nor is there any statement by Mr. Palatnik that he did sign it.

Certainly, the Statute of Frauds would state that this document would have to be signed in order for it to be binding.

This is not binding on the Debtor. Therefore, it's improper to admit it into Evidence.

THE JUDGE: There is no question

that it's binding on the document, but it's as advisable as any document or paper that he held in his hand during discussion, at least which he says is in discussion with the Debtor.

It's not being introduced as a contract and it doesn't have that effect.

I will take it for whatever it's worth.

MR. CRANER: It's certainly self-serving.

THE JUDGE: There is no question that to some extent it's self-serving.

But this is the document with respect to which he said he handed to the Debtor and the Debtor did not sign, that's all.

MR. CRANER: Well, certainly, we are not bound by it.

THE JUDGE: Of course, you are not bound by it.

MR. CRANER: Again, it goes to the weight and credibility of the witness whether or not this agreement was even offered or tendered to the Debtor.

THE JUDGE: Certainly. This is what he says was offered to the Debtor and which the Debtor didn't sign, that's all.

MR. KLEIN: The question of whether or not an agreement was, in fact, breached between the union and the Debtor was fully litigated in the N.L.R.B. proceeding and decided.

So I submit that this document has more significance than you have suggested that it has.

This document does constitute, in fact, an agreement between the parties.

The witness testified that the Debtor's President orally was prepared to accept it but then refused to sign it

only because the steward was not re-hired.

In any event, this matter has been fully, fairly, thoroughly and exhaustively litigated in the N.L.R.B. proceedings.

The conclusion was adverse to that of the Debtor and I want to call that to your attention at this time.

So we are offering it for a little bit more than just as a piece of paper handed to the Debtor which the Debtor refused to sign.

We are offering it to place into context the Exhibit to the Petition and also to show a connection between the prior contract and the current association contract to satisfy Your Honor's question as to just what are the terms and conditions that the Debtor would have to meet if it were, in fact, complying with the current contract.

MR. CRANER: I suggest you put

the current contract in.

MR. KLEIN: That comes next.

MR. CRANER: That's the critical thing.

THE JUDGE: I have already accepted it. Let's not belabor it.

I have accepted it for what it's worth as Exhibit "B".

(The above described document was marked Respondent's Exhibit "B" In Evidence, as of this date.)

Q Do you have with you a copy of the association contract, what I have been calling the association contract which has been executed by your union and the companies that are in the employers' association?

A Well, I have a copy of the industry - - what we call industry contract which conforms on economics with all of the terms and conditions of the association contract.

There may be some difference slightly in language on some clauses but basically both documents are the same.

The association are what we call industry contract.

Q If, in fact, the employer had complied with the agreement as set forth in Respondent's Exhibit "B", to what extent would the contents of this document have been the current collective bargaining agreement between yourself and the employer?

In other words, what deviations from this document would have been applicable to this Debtor?

A There is only one slight deviation in form. He pays his own sick leave whereas under this industry contract, he contributes the equivalent of that to a fund or two percent.

He has elected to take sick leave on his own instead of contributing to a fund to save himself a few pennies.

We agreed to go along with that so basically there is no difference.

It gives the men the same amount of sick days as the industry contract.

Q What page and what section of this

agreement would be affected by that understanding as to sick leave?

A Section 28, I believe. Section 28.

Q That begins on Page 35.

MR. KLEIN: Your Honor, I would like this document marked as Respondent's next Exhibit.

MR. CRANER: No objection.

THE JUDGE: It will be marked as Exhibit "C". That's referred to as the industry contract?

THE WITNESS: Independent industry, independent shops.

(The above described document was marked Respondent's Exhibit "C" In Evidence, as of this date.)

Q The President of the Debtor has testified that in his opinion 48% of his costs are attributable to the cost - - I'm sorry, not 48% of the cost, 48% of his sales price is attributable to the costs of labor, including fringe benefits, under your collective bargaining agreement.

I ask you whether based upon your ex-

perience and your knowledge of the operations of this particular Debtor, whether 48% is a fair and reasonable estimate?

MR. CRANER: Your Honor, I object. I don't think there is any testimony that it's 48% of sales attributable to labor costs.

THE JUDGE: I don't recall that it was sales either.

I thought it was 48% of his costs.

MR. CRANER: Costs.

MR. KLEIN: I understood his testimony to be that when he made a bid he had to allow 48% for costs under this contract.

But whatever it is, I would like to know if we are under a misunderstanding, maybe we ought to clear it up right here and now.

Is it 48% of the costs or 48% of the sales price?

MR. CRANER: Costs. The cost of

putting up the - - the cost of fabrication, 48% would be in shop costs.

Q I then ask you whether 48% of costs in your experience and based on your knowledge of this employer's operations can be fairly attributed to your collective bargaining agreement?

A Well, if I understand his costs to refer to the $7.27 an hour which covers direct as well as indirect labor and fringes, if that's what he meant, it would be out of whack of my experience, all out of whack, because structural steel is generally 50% - - the material costs 50% of the cost, generally.

It's not like dealing with a fancy ornamental structure.

Material comes in and gets some labor on it and goes out quickly. It's not fabricated in such a way that it requires a lot of labor, direct labor or not.

So that would strike me as something not consistent with what I know of the industry.

Q In your opinion, is the 48% figure high or low?

A It's high.

Q Approximately, based upon your best opinion, what is a fair and reasonable estimate of what labor costs are as compared to total costs?

A Well, you know, again, everybody figures a little different.

They may through in a larger percentage of the overhead, the indirect as well as the direct, but generally for a small shop like that, it would be, you know, 25% would be direct labor on structural steel.

Every shop is different though.

MR. CRANER: Every shop is different?

THE WITNESS: Yes, you know, some shops have tremendous overheads. This shop does not, from what was reported - - what I heard in the testimony, anyway.

MR. CRANER: Either the witness knows or he doesn't know.

I don't know what's been reported

to him.

The witness - -

MR. KLEIN: He is talking about what he has heard in his testimony.

THE WITNESS: What I heard, that's all I am talking about.

Q What is the basic difference between the finisher and a mechanic?

A Well, a finisher should know something about the various operations that go into the fabrication of the job.

He also has to have a knowledge of the drawings and how to read them and interpret them.

He knows to some extent - - he has to know to some extent how to handle men because he has men working under him.

So there is a little supervisory role, there is some projections in terms of operations so he doesn't pull one operation before another and get stuck in terms of spending extra labor costs.

He has to work with other people because they are limited to space in terms of moving steel

around.

He has to concern himself with that.

Q What about mechanics, what do they not do that finishers do?

A They generally - - well, they are generally involved on the direct fabrication of the labor.

They weld, burn, fit, punch, cut.

Q Is it fair to state that a finisher has to have all the skills a mechanic has, plus some more?

A He may run into an occasional guy that hasn't because he just lays out the work.

But by and large most of them do because they come up through the ranks.

Q Based upon your knowledge of conditions in the industry in the area where the employer has his facility, can competent people be obtained to perform the work of a finisher at the rate of wages and benefits that was testified to by Mr. Palatnik yesterday?

A A finisher or layout man, they are called either one, they are hard to get, especially good

ones.

Most of them make over minimum rates of pay than noted in the contract.

If you get into some areas of fabrication work, their rates of pay are considerably over.

So there is a shortage of skilled or competent finishers or layout men.

Q My question was whether in your experience, based upon your experience, he will be able to obtain competent finishers at the rate of wages he talked about yesterday?

A No.

Q Based upon your experience, will he be able to obtain competent mechanics at the rate of wages and benefits that he talked about yesterday?

A No, no.

Q Would you care to amplify that, dealing with mechanics?

A Well, they can modify and adapt themselves but it means cost.

They could train people, spend time training

a mechanic to do just welding, but if you have a small work force, if you have to spend time training a person and he has limited skills, all you need in a smaller shop is a man with all around skills that can jump from one operation to another.

In a large plant you can specialize in one operation, keep a plan on a man or one operation at a time.

Q Before testifying today, you reread - - before getting on the stand after lunch you reread the Affidavit that you submitted on January 29, 1974?

A Yes.

Q Are there any errors in the Affidavit?

A No, there's just one date, it says '67. It should be '68 in terms of when we organized the shop, I believe.

MR. KLEIN: Your Honor, I would like to offer Mr. Colavito's Affidavit at this time rather than again asking him question by question.

MR. CRANER: Your Honor, I think it's improper, but it's certainly part of this proceeding.

It's part of the record.

THE JUDGE: I said I would put this down for a hearing because I did not want to try it by Affidavit.

If there is some fact in there, in the Affidavit which he hasn't testified to that you want to bring out, you'd better do it through his testimony.

Q Can you tell us briefly what the effect would be upon the competitors of the Debtor should the relief that is sought by the Debtor in this proceeding be granted?

MR. CRANER: I object, that's not the issue here.

We are not worrying whether someone else is going to have economic problems.

The issue before this Court is the well-being of the Debtor and its

creditors.

I think it's highly improper. There are also non-union shops. What about them? - - They exist.

THE JUDGE: I will allow it for whatever it's worth.

THE WITNESS: The effect upon his competitors?

Q Right.

A The same effect whenever you have labor costs that are lower somewhere's else.

There are people that are directly competing with you. The very point I think he was trying to make that I heard across that these so-called non-union shops, who are actually not competitors of his, even though they are non-union shops.

MR. CRANER: I object, I don't think he is being responsive.

THE JUDGE: I haven't heard an answer in response to the question and I will sustain your objection.

What would be the effect on com-

petitors should the relief be granted?

A I think it would be unfair to his competitors and the employees that they have.

THE JUDGE: Unfair in the sense that the Debtor will do better, is that correct?

THE WITNESS: Sure, he has an advantage.

THE JUDGE: In other words, he will have greater success financially if he can get the relief that he is asking for, is that correct?

THE WITNESS. I am not so sure - - it's a relative term.

My own interpretation of his problem is not predicated on his getting lower wages and the sole answer to his problem.

It would hurt the industry in the sense that driving the prices down for the industry and all the competitors and he would have an advantage over it,

over them and their contributions to the fund would be affected by that, too.

Q In response to the Judge's question, you stated that you weren't satisfied that the Debtor's problem had to do with his costs under your collective bargaining agreement.

Would you amplify that, please?

A Well, there is what we call a labor market, whether it's union or non-union.

It's based, determined on rates of pay that over a period of time will attract a certain type of labor.

We don't think that the rate of pay is the determining factor in the efficiency of an operation.

We think that what a man gets for his labor costs is really more essential.

A man making $6.00 an hour can turn out three times as much than a man making $3.00 based on a skill.

It's a skilled industry. It's a dirty, heavy and dangerous industry.

You just can't automatically because you are paying less, your efficiency is greater.

Far from it, you may have a great degree of inefficiency even though you have a lower rate.

A higher rate can mean a greater degree of efficiency than a lower rate and that's our experience.

MR. CRANER: I object to the answer and move it be stricken.

It's a very general statement, it's very nice. I think we are talking about a particular shop and unless the witness is going to specifically state the quality of the people working for Mr. Palatnik right now, that's the germane response, not what company - - not what theoretically could be, that someone who gets paid less money is definitely going to be less productive than somebody who makes more money.

THE JUDGE: It's a generalization, it's speculative and I will allow it for whatever value it has.

It does not pin it down to Mr. Palatnik's employees.

Q Based upon your experience and knowledge, would you tell us whether or not in your opinion the employer would be able to obtain new skilled employees and maintain an efficient, productive, stable work force if he were to pay the wages that he talked about in his testimony yesterday?

A I don't believe so.

MR. KLEIN: I have nothing further of Mr. Colavito at this time.

THE JUDGE: Cross examination.

MR. CRANER: I have a few questions, yes.

EXAMINATION BY MR. CRANER:

Q Referring to Respondent's Exhibit "C" In Evidence, the agreement between Local 455 and the various shops that you testified Mr. Palatnik would be bound by essentially, referring now to Section 24, Section E - - Subsection E, you have a list of wages, is that right (handing)?

A Yes.

Q Your union had finishers and mechanics who were employed by Mr. Palatnik prior to February or July of 1973, is that correct?

A That is correct.

Q Could you tell us as of today how much a finisher would be paid?

A As of today?

Q As of today, do you know that, sir?

A About $7.00 something, $7.35, maybe.

Q That would be $7.35 today?

A I think so.

Q Is that his salary per hour?

A It's his wage rate per hour, yes.

Q Also, does the employer or would Mr. Palatnik, if he was paying this - -

A Maybe $6.95. I have to refresh my memory. What date is that? - - $6.90.

Q $6.90?

A July 1st it will go up to $7.40.

Q For a finisher?

A Yes.

Q Is it fair to say that mechanics are now being paid $6.25?

A That is correct.

Q In July it will go up to $6.70, is that right?

A Right.

Q Referring to the present time, a finisher who gets $6.90 an hour, could you tell us what fringe benefits, in addition, per hour the employer would have to contribute for that particular finisher?

A Well, it would apply to all of them. I would put in a figure of 30%, roughly.

Q In other words, 30% of $6.90 would be in addition, this would include the economic package, is that right?

A I think so. It's a rough figure, I could be off four percent or five percent, I may be high.

Q It could be higher?

A I may be high on it, but approximately 30%.

Q Would this 30% also apply to mechanics?

A Yes, all classifications.

Q You said that if the labor costs of Mr. Palatnik are lower, that this would be unfair, isn't that what you just said on direct examination a few minutes ago?

A Unfair to competitive employers.

Q Employees or employers?

A Businesses, yes.

Q Are you really concerned about the other employers or are you concerned about the fact that you represent people employed by these employers?

A Well, both. I mean, they go together.

Q So then theoretically, would you prefer to have Mr. Palatnik out of business rather than have him competing at a lower rate than the union shops, if you had your choice?

A No, you see, we never were given a choice, we never were given a choice.

Q I am asking you theoretically, if Mr. - -

A If we had a choice, we want to keep a man in business as much as we can.

Q Let me ask you a hypothetical ques-

tion.

If your alternative were Mr. Palatnik out of business or Mr. Palatnik operating at wages lower than the competition, competing against your union shops, what would you rather have?

A We'd have to make a judgment on all the facts concerned.

I just couldn't give you a black and white answer on that because we would have to judge the effect upon our other people to a certain extent.

We would have to make a judgment and I wouldn't say I can do it at this point.

Q Didn't you say that Mr. Palatnik competing at wage levels lower than the other shops then your contributions would drop from these other shops?

A No, I said they would be affected by it.

Q What do you mean by affected, would they go up, down or stay the same?

A No, they would be affected because it would eliminate for our members the - - I say the stability of the fund because if the funds were declining in terms of contributions, the benefits

that the men would get under welfare and pension would have to be affected.

So in that sense our people would be hurt.

Q So, in effect, aren't you concerned that if Mr. Palatnik is able to compete at prices - - wages lower that the real effect this would have on you would perhaps be that your union people might be hurt and isn't that what you are really concerned about?

MR. KLEIN: I want to object to the form of the question because it assumes that Mr. Palatnik would be able to compete, a fact which the witness has already said he does not believe would occur if this relief were granted.

Q If he could compete?

A State the question again.

Q Isn't it a fact, sir, that your real concern here is to make sure that Mr. Palatnik pays the same wages that every other union shop pays, whether he can stay in business or not because you are not interested in Mr. Palatnik, you are in-

terested in keeping minimum standards high so you can get contributions for your funds, isn't that a fact?

A That isn't the way we run our union, sir.

Q Can we have an answer?

A Sure, no, it's not a fact. It's not a fact that we have a narrow concept of an individual employer.

We spend a lot of time with individual employers trying to - - in fact, I extended for this man twice over a ten month period his delinquency in funds.

Q Then you struck him, right?

A After ten months, yes, after ten months. We were lenient with the man's delinquency for ten months.

The mens' benefits were being hurt. Other employers were screaming that he was using fund monies, the mens' money for his business whereas they were not allowed the same advantage.

We extended him for ten months which we haven't - - which we didn't have to do.

Q Maybe he had needed the money for

ten months?

A Maybe he did, maybe he didn't, but we struck after ten months after waiting for him.

And he had an obligation of paying within ten days.

Q Do you know what that did to Mr. Palatnik's situation, was he able to buy steel?

A We do as much as we can to cooperate with them to stay in business so people have jobs.

We can't guarantee and subsidize an employer for a long, long period of time.

That's not our role.

Q What I want to make clear is essentially you are paid and your interests are not in Mr. Palatnik or any particular employer, your interests belong to your people, isn't that your duty?

A Our prime reason we are in business is to represent our employees.

Q If it comes to a choice of whether Mr. Palatnik stays in business or goes, you measure it not how it helps Mr. Palatnik or your altruistic motives, it goes; how do our people come out of this,

do they do better if he is in business or do they do worse, isn't that how you really measure it in the end?

A The end result is what is the overall good. We want the employers to stay in business and we want our people to have jobs.

Q What is paramount, the employer or the employee?

A I am a union representative, I represent my people.

Q Of course, you do, of course, you do. Mr. Palatnik said that in January, 1973 he had approximately eighteen people working in his shop who were members of your union, is that approximately right?

A Eighteen, twenty, around that, yes.

Q Could you tell us how many people the union referred out of this work force, the union sent over and how many people Mr. Palatnik took off the street and trained himself?

A How many? - - I would have to take a look at the seniority list and guess because I am not involved in the daily administration of this shop.

The business agent takes care of that. I can recognize some names of it who were members of the union for a period of time.

So I assume these people were not trained and hired by Mr. Palatnik, they came out of the general pool of labor.

Q Do you know for a fact or do you just assume - -

A What?

Q (Continuing) - - whether or not Mr. Palatnik took these people and trained them himself or whether they were referred by you?

A If you are saying he trained all those people, I say it's not a fact.

Q Didn't he train approximately seventy-five percent of the people and your union referred approximately four of these people?

A I don't think so. I think the percentages are lopsided the way you have it.

Q Isn't it a fact that there is unemployment in this industry?

A Is there unemployment?

Q Yes.

A This is an industry which deals with construction.

Construction goes up and down based on the money rates, the money interest rates, money available for building and so forth.

So we have ebbs and flows like everybody else.

Q I want a simple answer, isn't there unemployment in the industry right now?

A Yes, for a shortage of steel, for bolts, lots of reasons, and sometimes lack of money for the building industry.

Q Why did you tell the Referee that Mr. Palatnik can't hire people if there are people in the industry unemployed?

A Because a man who spends fifteen, twenty years in the industry or thirty-five years in the industry is not going to work for an employer at a lower rate and not get his fringe benefits like pension, welfare or anything else.

A man just died, got killed in an accident and he can't get benefits from the funds because the man wasn't covered for the last six months.

That's what happens to a man.

Q Are there any people, and isn't it an economic fact that there are some people who would rather work for less money than they previously got rather than being on unemployment?

A Of course there are people like that; of course.

Q Aren't they available to Mr. Palatnik?

A I imagine he can get some people on that basis.

Whether he can run an efficient operatio for a business like this on a consistent basis, I would say no, it's not possible.

Q Isn't it to your interests and aren't you an interested party in saying that the only people who can really do a good job are union people and people who are paid union wages?

A No, I have been a union man all my life and I never said that.

Q What are you saying today, that unless Mr. Palatnik has union help in there, he is running an inefficient shop?

That's what I thought you were saying on direct.

A I'm sorry you thought that.

Q Then I am wrong in assuming that?

A No.

Q That's not your testimony?

A No, because the fact is there are many shops in this industry.

I worked in a 500 man shop as well as a small shop. I got varied skills under all kinds of businesses, where there is men in a situation and there isn't.

Where you have a real skilled pool in an industry, people circulating between different shops, they have pool funds for vacation, welfare, pension and that's the reason for it.

They pick up a lot of skills during the course of a lifetime.

Q Do you know if Mr. Palatnik is running an efficient shop right now?

A I don't believe he could be running an efficient shop.

Q Do you know or don't you?

A I haven't been in the shop but I don't believe so.

Q Do you know?

A Of course not, I haven't been into the shop.

Q Is it possible, is it at all conceivable that Mr. Palatnik can be coping and running an efficient shop without your union?

A On the same type of wages?

Q Is he running an efficient shop now?

A I don't know what he is doing even.

Q Why is it impossible for Mr. Palatnik to run the operation he used to run without benefits of paying union wages which would be with the benefits, about $9.00 and something an hour, why is it impossible for him to operate an efficient operation without paying the wages that you mandate in your contract?

A Well, if you are talking about - -

Q Not theoretically.

A If you are talking about a similar type of work - - I have to have something to compare with

Q The work he used to do?

A Then it's impossible because he has four men, it takes two men at least to bring in a load of steel.

Q I think you misunderstand my question.

A I don't know what you are talking about.

Q Can't Mr. Palatnik, if he had proper financing, if he had proper capitalization and if he could hire people and buy steel, couldn't he hire more people or similar people as he has right now and operate in the same manner that he used to operate?

A A man, if he had enough capital and he has the equipment, can run an efficient operation without the union, no two ways about it.

Q So that if Mr. Palatnik were able to reorganize without paying union wages and get the proper capitalization, he could make some money, couldn't he?

A If he had enough money to subsidize him for a period of time until he trains people, builds up a pool of skilled guys who will cooperate, give

them the benefit rights because if he - - if his people had to compete with our people for wages and benefits, he'd have to meet our standards or somewhere's near it or give them some kind of supplementary benefits that will make up for those fringes like bonuses and so on.

So we come down to the same thing, he can nominalize his cost, it's competing in the same market for labor.

Q Aren't there examples that there are shops in your industry and in other industries, shops that are traditionally unionized; that somehow are not unionized and somehow are able to function and get the kind of help they need and still make a profit and compete alongside your unionized shop?

A Well, not in my industry in this area, that I know of anyway.

Q Let me ask you this, you are familiar with the New Windsor firm?

A Yes.

Q Do they have a union?

A They have a union, yes.

Q They have a union?

A Yes, they do.

Q Could you tell us what union they are represented by?

A The Teamsters.

Q Can you tell us whether the Teamster wages are higher, lower or the same as the wages you are paying now?

A I don't know but I think they would be lower.

Q They would be lower?

A I think, but I say, I don't know.

Q Mr. Palatnik testified this morning that they are lower, as a matter of fact.

Does New Windsor compete with Kevin?

A I think he does.

Q Isn't it a fact that for the Snake Hill School in Orange County, New Windsor underbid Kevin Steel for a job that was worth $375,000 in 1972?

A I don't know that for a fact. I mean, if you say so.

Q Isn't it a fact that the Poughkeepsie Mall, New Windsor underbid Kevin Steel and this was

a job with 1100 tons, that New Windsor underbid Kevin Steel, a job that was worth $550,000?

Isn't it a fact, sir?

A I don't know. I mean, you are stating it.

Q Isn't it a fact that an eight story office building in Rockland County was underbid against Kevin Steel by New Windsor with its lower wages of a $410,000 job?

A If you want me to state and I will do it very readily, if you want me to state that non-union shops or union shops that have lower rates of pay get some jobs, of course it's true.

But it is also true that shops on our pay are taking jobs that Windsor bid on, too.

It's a fact of life in this industry.

Q I am kind of curious, why would someone be in the Teamster Union and get less wages than join your union and get higher wages?

A Why would the men be in there?

Q Yes.

A I can tell you the history of that shop if you want to hear it.

Q I am just curious.

A The company signed a contract with the Teamsters in his office before he had the employees. That's how he did it.

Q Why don't you move to discertify?

A You have to have employees to fight to do that.

Q They are satisfied to take lower wages than they could get with your union and you say that people will not work for Mr. Palatnik on a non-union basis because they get higher wages in a union shop?

Isn't there an inconsistency?

MR. KLEIN: Let him answer the first question.

A Please - - There is an inconsistency if you deal with the fact that you had - - if you read the history of this country and the N.L.R.B.A. and all the proceedings before it, you will see that many, too many individuals have injustices done to them without having the courage to fight back against it.

That goes to - - thatgoes on all the time,

whether it deals with labor or any other rights that people have.

Q Are you familiar with Monsey Iron, didn't you testify about that firm?

A Yes, it's a relative of Bob Palatnik's.

Q Is that a union or non-union shop?

A I don't think it's union, it just went into business about a year ago, I believe.

Q Didn't they bid against Kevin Steel for the Nyack Library, a $35,000 job and underbid them?

A I wouldn't know these facts.

Q Take the business away from Kevin Steel?

A I wouldn't know who bids and who gets what job.

Q How about the St. Agatha's Home, didn't Monsey Iron bid against Kevin Steel and take that job away, $7,500 job?

A I don't know, I say, I don't know.

Q Well, if it did, wouldn't it indicate that Mr. Palatnik can't compete with a non-union shop?

A Not at all, I think the history of Kevin shows when he became union he took more work on.

He was only a small man when he became union and all of a sudden he went to $1,700,000.

Q Didn't he lose $84,000 for fiscal '72?

A He said so.

Q Sometimes its high sales don't really mean very much if you are losing money, you know that?

A I saw the shop the way it was running before and after, I saw the building he put up, I saw the machines he bought and installed, the size of his erection crew and the area in which he covered in terms of his work, Jersey, Massachusetts, as well as having some other small items such as a - - such as swimming pools that he made on a regular basis.

Q Is Rockland County Iron, is that a union shop?

A It's not a union shop, it's a family shop, as I said before.

Q When Mr. Palatnik was paying Local 455 wages, didn't Rockland County Iron underbid him for a skating rink in Stony Point, a job that's worth $40,000?

A I don't know, I said I don't know who else was involved in these biddings.

I don't follow that aspect of it. I couldn't answer your questions.

Q Isn't this really the name of the game, if he doesn't get the jobs, if he can't bid successfully, he doesn't have any business, isn't that true?

A That's true of all employers.

Q How about Fallsburgh Iron, is that a union shop?

A No, it isn't.

Q Did that shop - -

THE JUDGE: One point I would like to ask, whether you feel by this cross examination with respect to jobs that the witness is completely unfamiliar with, do you expect that to be a true affirmative evidence of the existence

of these jobs?

MR. CRANER: I would like to disabuse of you of that idea.

I will put a rebuttal witness on.

Q Didn't Fallsburgh underbid Mr. Palatnik for work on the Nevele Hotel, a job that is $110,000?

A I don't know.

Q Because Mr. Palatnik couldn't compete, couldn't have a lower bid?

You have no knowledge of that, sir?

A No, I do not.

Q Liberty Iron Works, you mentioned that on your direct examination. Is that a union shop or a non-union shop?

A As far as I know, it's non-union.

Q What kind of outfit is Liberty Iron?

A They had one man up there.

Q Isn't it a fact that Liberty Iron in competing against Mr. Palatnik when he was using Local 455 men and paying Local 455 wages got a job

for the Middletown Mall bidding against Mr. Palatnik, a job for $660,000, this one man shop?

Is that a fact?

A If that's a fact, he brokered the work out somewhere's.

Q He underbid Mr. Palatnik, didn't he, to get the job?

A I don't know.

THE JUDGE: When you say, "One man", you mean one employee?

THE WITNESS: One employee, yes.

THE JUDGE: Off the record.

(Discussion off the record.)

Q At the end of 1972 or anytime in 1972, at the beginning of 1973, did Mr. Palatnik tell you that he was losing money and he needed some kind of relief?

A No, he did not.

Q He never told you that he was running at a significant deficit?

A No, he did not.

Q He never asked you to consider his

circumstances and to reduce the wage rate he has to pay the people in the collective bargaining unit?

A No, if you are raising that he was losing money in terms of wage rates and getting some relief there - - maybe I didn't answer you properly the first time.

THE JUDGE: I would like to have the question answered. Go ahead.

A I may have answered him incorrectly in the first two. If he is talking about running into difficulty in getting his money because of his being delinquent in the funds, we might have had some conversation on that, yes, we might have had some conversations on that in '72 or the early part of '73.

But if he is saying that he is referring to relief on wage rates as a result of being - - that conversation never took place at that time.

Q Mr. Palatnik at one point was behind what, $40,000 in his funds, approximately?

A I don't remember, it could be.

Q It's a lot of money, isn't it?
A Yes.
MR. KLEIN: You agree that's a lot of money?
THE WITNESS: Sure.
Q Certainly, in looking at the entire package that an employer has to pay and certainly in these - - in negotiating a contract on behalf of the union, though there is a difference between wages and fringe benefits, when you have to figure out how much it is going to cost you to do business, it's really all the same thing, isn't it, it's going to cost you so much an hour be it wages or benefits, isn't that true?
A Yes.
Q So if you are having trouble paying the benefits, isn't that an indication that somewhere there is economic difficulty?
A Well, my experience in the question of delinquency in contributions covering mens' benefits, if I was to limit myself to taking the employer's word that he is having difficulty and therefore I should just sit and wait, it's usually

the supplier and other people, the one who yells the loudest gets it.

We recognize that, even though they don't talk to us along those lines.

Q Is there ever a negative cash flow where there is not enough money to make the contributions?

A We recognize that in terms of that because most employers are small employers.

Q You have had occasion where shops have gone bust, haven't you?

A Yes, in this industry a lot of shops - - there is always a turnover because of family ownership and so forth.

Q Did you ever estimate a job?

A Did I ever estimate a job? - - I have estimated the time and stuff like that.

Q You have never run a shop?

A Yes, I have been a foreman in the shop.

Q You have been with management, is that right?

A Yes.

Q What is - -

A Fifteen years.

MR. KLEIN: I didn't hear that.

THE WITNESS: Fifteen years.

Q Do shops or companies come in from outside of this area, North Carolina, Virginia, et cetera, and bid?

A Do they come in?

Q It's not union, is it?

A You have a shop that comes from Pennsylvania, sometimes you have a large shop, if it's a very large shop, like sewerage disposal or big buildings, you may even get them from all over the country, sometimes from out of the country, even.

Q Are these companies paying the same rates that your shops under your contract pay?

A It may vary. If it comes from California their rates of pay and fringes are about the same.

If it comes from Washington - - I don't know them all.

Q How about Pennsylvania?

A Pennsylvania, lower, generally.

Q How about North Carolina?

A It would be lower, generally.

MR. CRANER: Thank you.

EXAMINATION BY MR. KLEIN:

Q Toward the beginning of the cross examination you were asked whether or not something about the choice you would make as to keeping the shop open or having it go Bankrupt and you answered one of the Counsel's questions with regard to this particular shop that you never had a chance.

Would you explain, would you amplify that? What do you mean when you said, "You never had a chance in dealing with this employer?"

A Well, I think the main reason, all the men who work there, most of the men anyway, thought the main issue was in getting rid of the steward, that issue remains right now, right through the contract period into the N.L.R.B. fight, that the prime reason he was locking the men out, we had to get rid of the steward.

Otherwise he wouldn't reopen the shop. Even if we arrived at a settlement of the contract, at that point he didn't raise the question, even though we discussed it and I debated it back and

forth, he agreed to the economic terms of the contract.

So I don't think we have ever had an issue as to the question of, "Look, I either die or survive based on the rates of pay I pay or I dont".

Because, we agreed as of May, the latter part of May, the beginning of June, he had agreed to the wage rates and the fringe benefits.

Q Counsel asked you toward the end of the examination a hypothetical question as to whether, if the Debtor had proper financing and capitalization, could he make a go of his business paying non-union scale and your answer was that if he had enough money to tide him over to train competent people, you thought he might be able to.

I would like to ask you a little flip on that question.

If he had proper financing and capitalization, is there any reason why he couldn't make a go of this business at the wage scales set forth in your collective bargaining agreement?

A He would be more stable in his labor re-

lations.

Obviously, people who work in the same area getting the same benefits would stay with him rather than going into another shop where they could get more money.

So he would have a more stable and efficient operation.

Q Has anything ever been told to you by this employer that would lead you to believe that his problems are more due to his collective bargaining agreements with your union than to the lack of proper financing and capitalization?

A His problems are more due to the collective bargaining?

Q Has he ever said to you, "My problems are due to your collective bargaining agreement rather than being due to lack of financing and capita lization"?

A I think - -

MR. CRANER: I object, that's kind of a leading question, his own witness.

THE JUDGE: I know, but it's

a proper question.

A I think what he concentrated on was the question of the steward and he wanted a free run of the shop.

He didn't want a steward who is going to look at the contract and enforce the contracts.

That's what his main emphasis was.

MR. KLEIN: I have nothing further.

MR. CRANER: I have no other questions.

THE JUDGE: Is that it, Mr. Klein?

MR. KLEIN: Yes.

THE JUDGE: There is no point in making motions, I am going to reserve decision.

Now, do either of you wish to submit Briefs?

MR. CRANER: I think we have pretty much briefed the law. If you would, I would like to submit a summary rather than just summing up.

I think the law is all in front of you.

This is an evidentiary hearing. I would like the opportunity to submit a Brief summarizing our position.

THE JUDGE: How long will it take you to get that?

MR. CRANER: A week.

THE JUDGE: It looks like you will have to move your adjourned meeting, which is on March 5th, you will have to move that back a week.

MR. CRANER: To the 12th.

THE JUDGE: Because I am certainly not going to be able to have a decision on that basis.

I am sure Mr. Klein is going to want to reply.

MR. CRANER: Well, we can submit identical Briefs or respond or - - I think I would prefer it that way.

If I am going to submit something, I think Mr. Klein - - I would like to

exchange Briefs, if any, and then - - I don't know if we have to rebut each other, I think that - - do you want to rebut our Brief?

MR. KLEIN: Your Honor, yesterday morning my Application was denied because time was of the essence.

I am prepared to sum up today and I would think that - -

MR. CRANER: Whatever the Court wants.

MR. KLEIN: I would say maybe we can recess five or ten minutes and we can sum up today and be done with it.

THE JUDGE: At your pleasure.

MR. CRANER: Time is of the essence but the reason why we acted was that if we had Briefs two weeks from now, we would stretch it out another week.

I can sum up right now, I am prepared to start.

MR. KLEIN: We can dispense with Briefs altogether then.

MR. CRANER: I am prepared to start right now.

Very briefly, the issue before you is whether or not this collective bargaining agreement In Evidence, this executory agreement is an onerous agreement.

I believe that we have been able to give you - - though I did rest, I would like to put Mr. Palatnik on with reference to the list that I questioned Mr. Colavito about.

I think this will be rather brief and perhaps he can amplify the situation a little bit so I know whether we are comparing apples and bananas.

THE JUDGE: I don't want it to develop on your case. Instead of resting, if you want to bring in another witness or bring back your former witness, you may do so.

MR. CRANER: Off the record.

(Discussion off the record.)

MR. CRANER: For the record, we will rest.

Your Honor, the Debtor asks that this Court set aside an executory collective bargaining agreement because this agreement is onerous.

We have shown it in two ways. First of all, we have been able to show that the wages that Mr. Palatnik would have to pay under this collective bargaining agreement are almost twice the average wages that he is paying now, a little less than twice.

I think it was a little over $9.00 an hour for a finisher and almost $8.00 an hour for a mechanic.

The average wages are almost, almost twice the amount. We have been able to show, Your Honor, that what had been - -

THE JUDGE: When you say $9.00 an hour, you mean $7.27 plus thirty percent.

MR. CRANER: Yes, which he would

have to pay, which is mandated to be paid.

THE JUDGE: Because this is the first I have heard a $9.00 figure.

MR. CRANER: That's the thirty percent on top of $6.90.

THE JUDGE: Yes, which is $2.07.

MR CRANER: Which is almost $9.00 an hour.

This is what he was mandated to pay. As a matter of fact, Kevin was struck when they didn't pay the fringe benefits.

It's called $6.90 an hour, it's really $9.00 an hour. This is an economic fact of life.

We have a company, Your Honor, that in fiscal 1972 lost some $86,000.

We have a company, that according to the testimony of Mr. Palatnik, unable to bid and unable to compete in today's market.

It's rough, we could do two things,

we can say, "If you can't compete, get out". But Mr. Palatnik does have an alternative.

Mr. Palatnik can compete and can remain in business if it doesn't - - if he doesn't have to pay the wage scale and continue under the economic procedures and provisions of the contract which would be imposed by Local 455.

THE JUDGE: Not under his present capitalization and financing scheme.

MR. CRANER: Exactly. Now, previously Mr. Palatnik was unprofitable with Local 455.

Now, the question is who is going to invest money to lose more money?

Like anything else, you need a gimmick, you need a come-on.

Mr. Palatnik is a hard working man, a dedicated man. He is the kind of man who people would want to invest with, but the one thing Mr. Palatnik can't turn around is the difference be-

tween $9.00 an hour and $4.50 an hour.

Now, the question is, can Mr. Palatnik survive if he were paying less wages?

Now, Mr. Colavito testifying for the union says that unless you pay the $9.00 an hour, you are not going to get help, there - - they are going to be dissatisfied, they are going to leave you.

I submit that Mr. Colavito is a very, very interested party in this case.

Mr. Colavito told us that if shops like Mr. Palatnik's exist his funds are going to go down, his funds will suffer, because as a matter of fact, Mr. Palatnik is going to take business away from his shops and as a matter of fact, survive.

So Mr. Colavito is talking out of both sides of his mouth.

He says, you are not going to get these guys, they are not going to stay with you, but you are taking the paying business away from the union shops.

I sympathize with him, he is looking out for his union, but I am looking out for Mr. Palatnik at this point and I submit that it is the function of this Court to protect a company in Chapter XI, to protect the creditors.

Because, we will not be able to come up with a plan, we will not be able to compete, we will not be able to get additional capitalization if we are going to continue to lose money.

Now, we are in an economic turn-down as Mr. Colavito said.

We have a time when shops are laying off people because it's getting harder and harder to get business.

Now, where will the business come from? - - It's going to come from the company that is able to bid lower, because both Mr. Colavito and Mr. Palatnik said you get the jobs because you bid.

This isn't a service industry,

it's what's on the bottom line.

That's what a builder has to come up with.

The general contractor has to be able to say, "I am going to sub this out to someone who is going to do the job cheaper".

If Mr. Palatnik is not competitive with competition coming in from other parts of the country, with competition in this county where he does most of his business, how is he supposed to bring in money and even with new capitalization, how is he supposed to get new jobs?

The testimony has shown that Mr. Palatnik has tried to become efficient, he has purchased new machinery, he has tried to lower his costs.

But because of union harassment insisting that high wages be paid when they shouldn't have been paid, by insisting that Mr. Palatnik pay wages of people who are competing from other areas who are

economically able to pay higher wages, unlike the erectors where they give you a break and say, "If you do work in this area, you have to use the wage scale in this area", that this is unfair and it's onerous.

I think we have shown both economically and statistically and empirically that unless this contract is set aside, Kevin Steel is going to go into Bankruptcy.

We respectfully ask this Court to set aside this contract, this executory contract.

Whatever rights the union has as the collective bargaining agent remain. If they want to picket, if they want to assert their rights as against Mr. Palatnik, that they are still able to do.

So we are not throwing the union out. What we are really throwing out is the excessive wage demand under these circumstances imposed by Local 455.

I would like to just say this.

THE JUDGE: Well, you are throwing them out. You are not denuding them of their rights but you are throwing them out in the sense that you will have a non-union shop and they will be - - there will be no one with whom you deal in connection with the operations of the Debtor in terms of vis-a-vis the union.

MR. CRANER: But we are not abrogating whatever rights they have under the National Labor Relations Act.

What we are saying to this Court and since this Court well knows, it has the authority if it wants to, if it seems - -

THE JUDGE: I understand, but I didn't want to let pass your remark that you are not throwing them out. Because basically what you want to do is to be rid of the burden, as you say, of the union obligation.

You want to cast that off.

MR. CRANER: Yes, but we can't

cast off the union.

I mean, they are there, that's my point.

THE JUDGE: From a legal standpoint, you have a collective bargaining agreement or they are the certified union and they have whatever rights that entails.

MR. CRANER: Yes. That exists regardless of what we do here.

My verylast point and I think it's really the most significant point is, my interest is to my client.

My interest is to Kevin Steel. My interest is to keep Kevin Steel alive. The union's interest is to make sure, as Mr. Colavito said, that Kevin Steel doesn't have lower labor costs because as Mr. Colavito said, this would be unfair.

MR. Colavito's interests aren't the creditors of Kevin Steel and rightfully so, Mr. Colavito stands for his men.

THE JUDGE: But you don't mean to

say that if you were successful here that Mr. Palatnik's firm would be successfully reorganized or there would be a Plan of Arrangement right on the horizon as a result, do you?

MR. CRANER: Well, let me say this. We have people who are interested, very interested in this situation.

They are interested in doing business with Mr. Palatnik and with Kevin Steel.

They have read the Financial sheets as we presented them to you today. I can't really say to these people in terms of prospective investment, come along, invest your money, do everything the same as we have been doing, pay the same wages that we have been paying, use the same machines that we have been using, pay the same costs that we have been paying and somehow we are going to turn the whole thing around.

It just doesn't work that way.

In fact, the situation, because of the economic horizon, the situation is going to get worse, not better.

The only way, the only way that Kevin Steel can survive is to get this unfair advantage that the other union shops have, to have lower wages.

Without this unfair advantage, Kevin Steel is not going to be able to hack it.

Mr. Palatnik has put a lot of money - - a lot of money has gone through this company.

THE JUDGE: You don't mean unfair advantage, you mean advantage for your adversaries.

For your adversaries you characterized it as unfair.

MR. CRANER: I put quotes around this, "Unfair advantage".

This alleged advantage is the advantage to give this company life.

THE JUDGE: I understand.

MR. CRANER: The last point is I think significant.

I leave it to you to determine whether or not Mr. Palatnik is going to be able to attract people to work for him or whether or not he has to pay this $9.00 an hour, it's either/or.

We submit, Mr. Palatnik has testified that through the years he has been getting people off the street, he has been able to - - not get them through the union, but bring them from this immediate area with the unemployment around here, with the fact that people do want to work and Mr. Palatnik has been able to train these people and to function.

In fact, they became the 455 people. Mr. Palatnik has brought them to the union, not the union bringing them to Mr. Palatnik.

That we will be able to attract competent help and I think it's an economic situation whether or not Mr. Palatnik has to pay $9.00 an hour or pay nothing at

all.

I don't believe that the only efficient dedicated, loyal people are the people who get $9.00 an hour, not the $4.50.

I think there are people who can exist without a union, craftsmen who will work and if they are giving a salary that attracts them - - this is a market-place thing, not an artificial platform created by the union - - let the market-place decide whether or not these people are able and willing to work.

We feel that they are. Our experience is that they are. We are functioning with them.

If we have capitalization, we can hire more, we can get more steel, put more people to work and make a profit.

I have taken a long time to say that we respectfully ask that the Petition be granted, that this contract, this collective bargaining agreement be set aside.

MR. KLEIN: Your Honor, when we began this hearing I was of the impression that the labor-management problems would be the major problems before you.

At the conclusion of the hearing I am satisfied that this is not the case and that the Petition must be denied for strictly a straight Bankruptcy reason, that without even having to consider the problems of aiding and abetting an unfair labor practice by permitting the employer to reap the benefits of his own malfeasance as found by the National Labor Relations Administrative Law Judge.

I don't think we have to get to those problems

They are there, they are significant, but at the very least, they just reinforce that reason why under straight Bankruptcy principles, this matter should be denied.

Your Honor, we have had no plan submitted here at all.

I express this because one of the

cases we cited in our Brief, I believe it's Mamiconti Gowns, in view of the fact that no plan is submitted, that the relief should be denied forthwith.

We have this employer coming in and saying that of all the executory contracts he has - - he ticked off five or six of them - - this is the only one that he seeks to set aside.

Yet, he has made no evidentiary showing at all that this contract with Local 455 is either the cause of his present difficulty or that somehow reducing it would be the cure of his difficulties.

Basically, I grew up as a negligence lawyer and I am basically burden of proof oriented.

I feel there has been no credible proof of cause, tieing in his contract with Local 455 and his economic difficulties.

At the very least, there should have been some expert testimony, some

financial expert who could have submitted an anlysis of his operations and shown that the root of his problem was, in fact, Local 455 and that the cure of his problem is, in fact, this contract with Local 455.

We simply have had no such proof. I think before we set aside one contract out of five and pin all of the Debtor's problems on that one contract, you are entitled to receive proof of a far better quality than was presented to you.

I say if there had been some expert in the industry, some employer representative, somebody from the Small Business Administration, even his own accountant, who could have come in and said that these are the costs and these are the results and comparing these he can live, but you have had no proof like this.

I think for that reason alone that the Application has to be denied.

The employer has said that he lost

money in 1972.

Yet he initially said that he made $18,000 in '72. Then the record shows he lost according to him some $86,000 in 1972.

Yet, as shown by the materials that you saw today, the difference between profit and loss is in inventory.

Now, if the difference in profit and loss can be in inventory, how can Local 455's contract be attributed as the sole cause which, if remedied, is going to make this into a viable concern?

Your Honor, I just don't believe that there has been any proof or showing that the elimination of this contract is going to make the employer any better.

Counsel, I think, put his finger on it in one of his questions on cross examination to Mr. Colavito, where he said, in part, if he had proper financing and capitalization - - there has been no testimony here that it is not lack of such

financing and capitalization that is the cause of it.

That it is Local 455 and not such financing and capitalization. Under Local 455 and with a competitive contract with the employer group, am I to argue that it's because of Local 455 that it grew? - - I could just as easily take credit and Mr. Colavito could just as easily take credit for the growth.

Itwould be just as sensible and arguable that now he is losing money and it's Local 455's fault.

It now remains that the contract with Local 455, it's one of the elements that go to make up this Debtor's business. There should have been some kind of treatment of all of the Debtor's problems, some analysis upon which you could be asked to make a reasonable decision that, yes, this contract is onerous and yes, eliminating this contract will make it viable for the employer.

There simply is no such proof here.

We also have the fact, Your Honor, that in spite of doing what he wants to do, since the strike in February, 1973, the employer has by his own testimony, still been losing money in 1973.

Even though he has been running the business without any Local 455 interference, he is still in the position of losing money.

I offer that to suggest again that the proof shows that Local 455's contract is not the rudimentary basis of this employer's problems.

I would suggest, Your Honor, that an employer who reduces his operations from a fifteen man shop to a one man shop after a strike, as he testified that he did this, his testimony was the strike was one day, Mr. Colavito's testimony was the strike was one week - - shows such an emotional reaction to situations that I query whether

or not this approach - - this problem might be the basis for the difficulties in which the Debtor finds itself.

I don't know the answer. I submit we have not been given any kind of proof to show that the employer's problems are not due, one, to maybe difficulties in his own management; two, lack of adequate financing; three, lack of adequate capitalization; four, over-extension of himself in purchasing this equipment.

He certainly did not confer with the union before buying the equipment to find out - - ask their expertise whether this would help him to grow or not.

He felt he knew what he was doing when he did it. He didn't ask to take us into his confidence at that time.

THE JUDGE: Isn't it conceivable though that while the union contract might not be the sine quo non with respect to the losses, nevertheless it might be the answer with regard to coming out from

under his situation?

In other words, it is conceivable that other factors contributed to his deteriorating situation, but that nevertheless the existence of the contract might prevent him from coming out of it, while it along may not have been the reason for it?

Not only it along, but it might not have even contributed to his financial demise, but that its existence might prevent him from breathing new life into the organization.

MR. KLEIN: That I submit first there has been no proof of that.

We have had no proof that changing the contract is going to enable him to survive.

As a matter of fact, we have proof that he has been operating his own way since the beginning of the year, that he has stopped making his payments on the trucks, I believe it was, seven months

ago, which is after he stopped complying with the contract.

There has been no showing that this contract is even going to cure it.

There has been no showing of either, that it can cure or either that it is the cause.

I reiterate, there has been no showing of either one. Similarly, I think, if the employer were interested in good faith in operating rather than just getting rid of Local 455, he would have come in here with some sort of plan which says, "Look, I have to reduce all of my things by ten percent. I want this one reduced".

If he says, "I want this and that and that and the other reduced and if they are reduced, I can survive by this amount".

By singling out the Local 455 contract as the only one of the executory contracts to be set aside without any proof that is the cause or can cure his

problem, I think is totally unwarranted.

I point out that the question of profit or loss - - I am not even satisfied that there is a showing, a sufficient showing of profit or loss.

The $18,000 figure which was testified to initially on direct examination yesterday as the profit for 1972 was the same figure which the accountant who testified for us today said would be the profit for 1972, the same number, $18,000, if the inventory as listed on the worksheet for the three months ending January 31, 1973 were the inventory for the preceding year.

So there is just such a total failure of proof to carry the burden that is required to set aside the executory contract that I don't even think it's necessary to go into the questions of whether or not a collective bargaining agreement with the loss of pension rights, et cetera, should be cancelled at all.

I think that is adequately treated in our Briefs.

I don't want to repeat the argument here. But I think on the basis of the proof that the employer has submitted, he has just simply not carried his burden.

He has had a dry run, if you will, since February of 1973 and by his own testimony, he is still losing money in 1973.

We have had no proof - - the proof that he lost money in '72 and that he lost money the first three months of '73 depends upon an inventory.

We have had no proof of that inventory.

Again, we show that if you used the figures from the '72 inventory as the beginning inventory during the last three months before the strike, he made money in '73.

I say there is a total failure of

proof here and the Petition, the Application must be denied for that reason.

MR. CRANER: The only thing I would like to add is the only executory contract that we are talking about is this collective bargaining agreement.

All our other contracts are secured creditors.

We have, in effect, set those aside by not paying them, we are not paying for equipment, we are not paying for our trucks.

It is not as if everyone is taken care of except the union, somehow we have just singled out the union.

Also, we have chosen to avail ourselves of the assistance of the Chapter XI proceeding.

We could have also gone into Bankruptcy and walked away from the whole thing. We are trying to save the whole situation, that's what this Court is for.

Mr. Klein is very, very silent as to the alternatives.

Mr. Klein can say, "Go on out, pay the rate we want, you know, it's a rough world out there".

If we go Bankrupt, I am sure there are other shops for them to organize.

We are here because we feel that if there is ever any economic salvation for this company, it's before this Court.

I think what Mr. Klein has forgotten about is that this is a Bankruptcy Court, not a general Court of Law.

We are interested in Bankruptcy matters here and the status of a matter in Chapter XI.

We are dealing with a very sick corporation or it wouldn't be this deep in debt.

I think the Schedules are before the Court. A lot of money is owed here.

Mr. Palatnik can walk away from this and start over again; the creditors can't.

We hope that on behalf of the creditors and, of course, on behalf of Mr. Palatnik, we don't want to say that he is doing this just for his creditors, that a mutual benefit will come by granting this motion and a plan granted.

Now, the last thing is because of the sensitivity of this matter, I think any prospective investor would be very, very loathe to say I am going to help get a union out and then I will do business with you.

If a company or a prospective investor disclosed himself prematurely and this motion were denied, this could be very, very embarrassing and very awkward to a prospective investor.

It is for that reason that we cannot disclose the people whom we have been talking about.

I think it should be pointed out to Mr. Klein that in matters such as this, with sensitive negotiations, not just with

a labor union, but many matters involving a company in Chapter XI, it is not unusual to hold back on a plan until the prospective investor is satisfied, before there is disclosure.

Because, after all, we need someone, they don't need us.

MR. KLEIN: One brief reply, the word that a prospective investor wants to get the union out - - this is a repetition of the language that I questioned the Debtor's President about this morning - - and yesterday - - was this investor desirous of just eliminating some of the aspects of the collective bargaining agreement or "Getting the union out".

MR. CRANER: The union is there.

MR. KLEIN: That was the phrase that was used just now and that was the phrase used yesterday.

MR. CRANER: I pointed out to the Judge we can't get the union out.

THE JUDGE: I would like to hear

Mr. Klein.

MR. KLEIN: The testimony was yesterday that these people were prepared to give financing so long as there was no contract with Local 455.

The language as I wrote it down, reluctant to enter into an agreement so long as 455 has a contract.

MR. CRANER: That's true.

MR. KLEIN: That means get rid of Local 455.

MR. CRANER: Economically, yes.

MR. KLEIN: When we started talking about using the Chapter XI proceedings to get Local 455 out altogether, then Your Honor, we have to consider the National Labor Relations Act policies.

If that is the real underlying reason here that he can't get financing unless - - because somebody says so long as Local 455 is in the picture, I am not going to provide you with financing and I say, Your Honor, you have to consider the

policies of the National Labor Relations Act and say that if that's the basis for it, I have to deny the relief.

Because, this Court cannot permit itself to be used as a tool to violate the National Labor Relations Act.

MR. CRANER: Mr. Klein wants to make that the issue. That's why he goes back to that time after time.

We cannot get the union out. Whatever rights the union has will remain regardless of what this Court does.

What we want to do and what Mr. Palatnik testified in direct response to the Court's own question, we cannot live with this - - with the economic aspects of this contract.

That's what we seek for this Court to abrogate.

The union - - whatever rights the union has and any investor will have to talk and look into that with his eyes open,

will remain.

What we do want to avoid is having to pay wages mandated by Local 455.

That we cannot do and that an investor is not going to go along with and I don't blame them.

THE JUDGE: I think we have covered it pretty much, Decision Reserved.

- - - - - - - - -

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

D. EXHIBIT

Form 1120S — Department of the Treasury, Internal Revenue Service

U.S. Small Business Corporation Income Tax Return

for the calendar year 1971 or other taxable year beginning November 1, 1971, ending October 31, 1972

1971

A Date of election as small business corporation: 1972

B Business Code No. (see page 4 of instructions): 3440

Name: Keyed Steel Products Inc

Number and street: Beech Road

City or town, State, and ZIP code: West Hamptstead New York 10992

C Employer Identification No.: 13-2575722

D County in which located: Rockland

E Enter total assets from line 14, column D, Schedule L

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction M.

GROSS INCOME	1 Gross receipts or gross sales 12,733,196.98 Less: returns and allowances 542.91	1	12,732,654 08
	2 Less: cost of goods sold (Schedule A) and/or operations (attach schedule)	2	11,941,907 72
	3 Gross profit	3	791,128 66
	4 (a) Domestic dividends	4(a)	
	(b) Foreign dividends	4(b)	
	5 Interest on obligations of the United States and U.S. instrumentalities	5	
	6 Other interest	6	320 00
	7 Gross rents	7	
	8 Gross royalties	8	
	9 Gains and losses (separate Schedule D, Form 1120S and/or Form 4797)		
	(a) Net short-term capital gain reduced by any net long-term capital loss	9(a)	
	(b) Net long-term capital gain reduced by any net short-term capital loss (if more than $25,000, see instructions)	9(b)	
	(c) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(c)	
	10 Other income (see instructions—attach schedule)	10	
	11 Total income, lines 3 through 10	11	791,448 66
DEDUCTIONS	12 Compensation of officers (Schedule E)	12	31,250 00
	13 Salaries and wages (not deducted elsewhere)	13	71,437 31
	14 Repairs (see instructions)	14	2,100 77
	15 Bad debts (Schedule F if reserve method is used)	15	(577 35)
	16 Rents	16	17,586 17
	17 Taxes (attach schedule)	17	16,182 56
	18 Interest + Bank Charges	18	25,223 40
	19 Contributions (not over 5% of line 20 adjusted per instructions—attach schedule)	19	
	20 Amortization (attach schedule)	20	
	21 Depreciation (Schedule G)	21	11,419 46
	22 Depletion (attach schedule)	22	
	23 Advertising	23	
	24 Pension, profit-sharing, etc. plans (see instructions)	24	
	25 Employee benefit programs (see instructions)	25	
	26 Other deductions (attach schedule)	26	93,877 25
	27 Total deductions, lines 12 through 26	27	877,370 53
	28 Taxable income, line 11 less line 27	28	(85,921 87)
TAX	29 Income tax on capital gains (Schedule J)	29	
	30 Minimum tax (see instrs). Check here ☐ if Form 4626 is attached	30	No
	31 Total tax (add lines 29 and 30)	31	
	32 Credits: (a) Tax deposited with Form 7004 (attach copy) 32(a) 2300.00		
	(b) Tax deposited with Form 7005 (attach copy) 32(b) 2300.00		
	(c) Credit for U.S. tax on special fuels, nonhighway gas, and lubricating oil (see instr. — attach Form 4136) 32(c)		4,600 00
	33 TAX DUE (line 31 less line 32). See instruction G for depositary method of payment →	33	-0-
	34 OVERPAYMENT (line 32 less line 31) REFUND →	34	4,600 00

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

The Internal Revenue Service does not require a seal on this form, but if one is used, please place it here.

7/15/73 — Signature of officer — Pres — Title

Date — Signature of individual or firm preparing the return — Address

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

Form 1120S (1971) Schedule A—COST OF GOODS SOLD (See instruction 2) Page 2

Method of inventory valuation (specify) ▶ [illegible]

Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? ☐ Yes ☐ No. If "Yes," attach explanation.

1 Inventory at beginning of year	[illegible]	5 Total of lines 1 through 4	1298566.02
2 Merchandise bought for manufacture or sale	5[illegible]3.02	6 Less inventory at end of year	127628.30
3 Salaries and wages	2[illegible]225.42	7 Cost of goods sold (enter here and on line 2, page 1)	1171907.72
4 Other costs (attach schedule)	132[illegible].30		

Schedule E—COMPENSATION OF OFFICERS (See instruction 17)

1. Name of officer	2. Social security number	3. Title	4. Time devoted to business	5. Percentage of corporation stock owned	6. Amount of compensation	7. Expense account allowances
[illegible]	076-21-8[illegible]	Pres.	[illegible]	04	31650.00	
						None
Total compensation of officers (enter here and on line 12, page 1)					31650.00	

Schedule F—BAD DEBTS—RESERVE METHOD (See instruction 15)

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve: 4. Current year's provision	Amount added to reserve: 5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1966.						
1967.	667[illegible]14.6		1613.20	-		1613.20
1968.	106 361.87		-0-	-		1613.20
1969.	285 054.96		8391.10	-	4257.20	5737.00
1970.	273 704.16		4453.71	-	4716.33	5474.06
1971.	[illegible]	[illegible]3487	(597.35	-	-	4876.73

Schedule G—DEPRECIATION (See instruction 21)

Note: For new depreciation rules, see Form 4832 (Revised). Form 4832 (Revised) also explains the effect the new rules have on guideline lives under Rev. Procs. 62-21 and 65-13. Taxpayers using these lives: Make no entry in column 2. Enter the amounts in column 3 for assets held at the end of the year and enter the accumulated depreciation at the end of the year in column 4. You may (a) group depreciable assets in accordance with the categories shown below or (b) continue to list your assets in the same manner as in prior years. IF YOU NEED MORE SPACE, USE FORM 4562.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below) ▶						
2 Depreciation from Form 4832 (Revised)						
3 Other depreciation:						
Buildings						
Furniture and fixtures	VAR	6268.67	1397.44	S.L.	VAR	523.47
Transportation equipment	VAR	28[illegible]77.09	20125.34	S.L.	VAR	1782.00
[illegible] equipment	VAR	16[illegible]36.56	25089.93	S.L.	VAR	7044.96
Other (specify)						
LEASEHOLD IMP	VAR	36476.52	451781	SL	VAR	1061.67
BRIDGE CRANE	VAR	37504.28	4392.73	SL	VAR	928.36
4 Totals		281253.41				11410.46
5 Less amount of depreciation claimed in Schedule A and elsewhere on return						
6 Balance—enter here and on line 21, page 1						11410.46

Schedule H—SUMMARY OF DEPRECIATION (other than additional first-year depreciation)

	Straight line	Declining balance	Sum of the years-digits	Units of production	Other (specify)	Total
1 Under Rev. Procs. 62-21 and 65-13						
2 Depr. from Form 4832 (Revised)						
3 Other	11410.46					11410.46

Schedule J—TAX COMPUTATION (See instructions)

1 Taxable income (line 28, page 1)		Loss
2 (a) Enter 48 percent of line 1 (members of controlled groups, see instructions)		
(b) Subtract $5,500 and enter difference	6,500.00	
3 Net long-term capital gain reduced by net short-term capital loss (from line 9(b), page 1)		25,000.00
4 Subtract $25,000. (Statutory minimum.)		
5 Balance (line 3 less line 4) (see instructions)		
6 Enter 30 percent of line 5 (see instructions)		
7 Income tax (line 2 or line 6, whichever is lesser). Enter here and on line 29, page 1		-0-

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

Form 1120S (1971) Page 3

Schedule K—SHAREHOLDERS' SHARES OF INCOME (See Instructions)
Computation of Corporation's Undistributed Taxable Income

1 Taxable income (line 28, page 1)		-0-
2 Less: (a) Money distributed as dividends out of earnings and profits of the taxable year		
(b) Tax imposed on certain capital gains (line 31, page 1)		
3 Corporation's undistributed taxable income		-0-

Schedule of Distribution and Income (attach additional sheets, if necessary)

1. Name of each shareholder	2. Social security number	3. Stock ownership: Number of shares	3. Stock ownership: Period held From	3. Stock ownership: Period held To	4. Percentage of time devoted to business
A Robert Williams	016-39-8555	100	1/1/72		100%
B					
C					
D					

Shareholder's Share of:	Shareholder A	Shareholder B	Shareholder C	Shareholder D	Total
4 Compensation	21650.00				
5 Dividends paid					
6 Undistributed taxable income (loss)	(24377.93)				
7 Net long-term capital gain after tax (see instructions)*					
8 Dividends entitled to exclusion					
9 Ordinary income					
10 Nondividend distributions					
11 Tax preferences:					
a Excess investment interest: (1) Investment interest expense					
(2) Investment income					
(3) Investment expense					
b Accelerated depreciation on real property: (1) Low-income rental housing (sec. 167(k))					
(2) Other real property					
c Accelerated depreciation on personal property subject to a net lease		$			
d Amortization of certified pollution control facilities					
e Amortization of railroad rolling stock					
f Reserves for losses on bad debts of financial institutions					
g Excess percentage depletion					
h Net long-term capital gain after tax					

*Each shareholder must be notified as to what amount of his pro rata share of long-term capital gains may qualify as exclusion (d) gains. See section 1201(d).

P Date incorporated 12/20/66

Q Did the corporation at the end of the taxable year own directly or indirectly, 50 percent or more of the voting stock of a domestic corporation? ☐ Yes ☒ No. (For rules of attribution, see section 267(c).)
If the answer is "Yes," attach a schedule showing:
(a) name, address, and employer identification number; and
(b) percentage owned.

R Did the corporation during the taxable year have any contracts or subcontracts subject to the Renegotiation Act of 1951? ☐ Yes ☒ No
If "Yes," enter the aggregate gross dollar amount billed during the year

S Amount of taxable income or (loss) for: 1968 142,065.37; 1969 15,716.78; 1970 154,257

T Refer to instructions for business activity codes and state the:
Principal business activity
Principal product or service

U Were you a member of a controlled group subject to the provisions of sections 1561 or 1562? ☐ Yes ☒ No

L Did you claim a deduction for expenses connected with any:
(1) Entertainment facility (boat, resort, ranch, etc.)? ☐ Yes ☒ No
(2) Living accommodations (except employees on business)? ☐ Yes ☒ No
(3) Employees' families at conventions or meetings? ☐ Yes ☒ No
(4) Employee or family vacations not reported on Form W-2? ☐ Yes ☒ No

M Did you file all required Forms 1099, 1096 and 1087? ☐ Yes ☒ No

N Did the corporation, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country? ☐ Yes ☒ No
If "Yes," attach Form 4683. (For definitions, see Form 4683.)

O Answer only if (1) this is the first 1120S return filed since your election to be treated as a small business corporation and (2) the corporation was in existence for the taxable year prior to the election and had investment credit property:
Was an agreement filed under section 1.47-6(b) of the Regulations? ☐ Yes ☐ No

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

Form 1120S (1971) Page 4

Schedule L—BALANCE SHEETS (See Instructions)

ASSETS	Beginning of taxable year (A) Amount	(B) Total	End of taxable year (C) Amount	(D) Total
1 Cash		34 551 16		42 772 57
2 Trade notes and accounts receivable	273 704 16		311 161 56	
(a) Less allowance for bad debts	5 474 08	268 230 08	4 276 72	230 884 84
3 Inventories		77 508 28		186 528 20
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule) P.P. & E.P.	NIL	31 609 70		24 005 90
6 Loans to shareholders		35 277 22		
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				
9 Buildings and other fixed depreciable assets	135 637 48		286 293 41	
(a) Less accumulated depreciation	57 499 08	78 134 03	68 823 91	217 469 50
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)	660 84			
(a) Less accumulated amortization	660 84	-0-		
13 Other assets (attach schedule)		5 825 00		900 00
14 Total assets		536 135 40		630 477 10
LIABILITIES AND SHAREHOLDERS' EQUITY				
15 Accounts payable		272 791 60		283 558 69
16 Mtgs., notes, bonds payable in less than 1 year		150 638 28		115 248 00
17 Other current liabilities (attach schedule)		47 917 47		14 33 47
18 Loans from shareholders				31 100 00
19 Mtgs., notes, bonds payable in 1 year or more		82 200 72		32 379 25
20 Other liabilities (attach schedule)				
21 Capital stock		10 750 00		10 750 00
22 Paid-in or capital surplus (attach reconciliation)				
23 Retained earnings—appropriated (attach schedule)				
24 Retained earnings—unappropriated				
25 Shareholders' undistributed taxable income		15 637 37		(86 371 93)
26 Less cost of treasury stock		(43 825 31)		(43 825 31)
27 Total liabilities and shareholders' equity		536 135 40		630 477 10

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	(86 371 93)	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		(a) Tax-exempt interest	
3 Excess of capital losses over capital gains			
4 Taxable income not recorded on books this year (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		9 Total of lines 7 and 8	
6 Total of lines 1 through 5	(86 371 93)	10 Income (line 28, page 1)—line 6 less line 9	(86 371 93)

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year		5 Distributions out of current or accumulated earnings and profits: (a) Cash	
2 Net income per books	(86 371 93)	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Current year's undistributed taxable income or net operating loss (total of line 6, Schedule K)	(86 371 93)
		7 Other decreases (itemize)	
4 Total of lines 1, 2, and 3	(86 371 93)	8 Total of lines 5, 6, and 7	
		9 Balance at end of year (line 4 less line 8)	

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DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

KEVIN STEEL Products INC. + 132573722 Form 20S
BEACH ROAD FYE 10/31/72
WEST HAVERSTRAW, NEW YORK 10993

PAGE 2 SCHEDULE A- LINE 4

OTHER COSTS:

SUB CONTRACTING	229 844.87	
FREIGHT-IN	38 071.99	
BLUE PRINTS	3 321 33	
EQUIPMENT RENTAL	5686.65	
UNION FUNDS	41 632.30	
SHOP SUPPLIES	18345.85	
DETAILING + ENGEERING	60535.43	
OUTSIDE ERECTORS	228803.67	
PRINT	7247.21	
TOTAL		633489.30

PAGE 1 LINE 17 TAXES

FICA	12 067.11	
FUI	675.00	
NYSUI	3290.18	
DBL	25.27	
NYS FRANCHISE	125.00	
TOTAL		16782.56

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TZX RETURN FOR YEAR ENDING 1972

KEVIN STEEL PRODUCTS INC # 132573722 — FORM 1120
BEACH ROAD — FH/6 10/31/72
WEST HAVERSTRAW NEW YORK 10993

PAGE 1 LINE 26 - OTHER DEDUCTIONS:

INSPECTION COSTS	4207.65
FIELD EXPENSE	10981.23
TRAVEL + AUTO	13048.95
DUES + SUBSCRIPTIONS	1732.35
MEALS + ENTERTAINMENT	5017.24
UTILITIES	3686.38
INSURANCE	21719.41
HOSPITALIZATION	3234.23
LEGAL + ACCOUNTING	8460.36
OFFICE EXPENSE	884.70
MISCELLANEOUS	2735.05
POSTAGE	485.83
SHOP EXPENSE	2880.96
SELLING EXPENSE	578.88
COMMISSIONS	4500.00
TELEPHONE + TELEGRAPH	8724.03
TOTAL	92877.25

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

Due 1/15/73

Form **7004**
(Rev. Sept. 1969)
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time to File Corporation Income Tax Return

(Under section 6081(b) of the Internal Revenue Code)

NOTE: Prepare this form in duplicate. File the original with the Internal Revenue office where you are required to file your income tax return. Attach the duplicate to your income tax return.

Name of corporation	Employer identification number
KEVIN STEEL PRODUCTS INC	13 2573722

Number and street: BEACH ROAD

City or town, State, and ZIP code: WEST HAVERSTRAW NEW YORK 10993

Check type of return to be filed:
- ☐ Form 1120
- ☐ Form 1120-F
- ☐ Form 1120-L
- ☐ Form 1120-M
- ☒ Form 1120-S
- ☐ Form 990-C
- ☐ Form 990-T

An automatic 3-month extension of time until APRIL 15, 1973, is hereby requested in which to file the income tax return of the corporation named above for the taxable year beginning NOV 1, 1971, and ending 10/31, 1972.

1. If the taxable year above is for a period of less than 12 months, is the short period attributable to a change in accounting period? . . . Yes ☐ No ☒

2. Does this application also cover subsidiaries to be included in a consolidated return? . . . Yes ☐ No ☒
If "Yes," complete the following:

Name and Address of Each Member of the Affiliated Group	Employer Identification No.

3. At least 50 percent of the tax tentatively determined to be due (line 3(c)) must be deposited on or before the original due date of the corporation's income tax return. See instructions for depositary method of payment.

(a) Tentative amount of tax for the taxable year after taking into account any— Tax surcharge; Foreign tax credit; Investment credit; Personal holding company tax; Tax from recomputing a prior year investment credit; Credit from regulated investment companies; Credit for Federal tax on nonhighway gasoline and lubricating oil	4600 00
(b) Less: Estimated tax payments (include amount of preceding years' overpayment allowed as a credit—do not include any "quick refund" of overpayment of estimated tax applied for on Form 4466)	
(c) Balance due	2600 00
(d) Amount required to be deposited—at least 50 percent of line 3(c). See instructions for depositary method of payment	2300.00

SIGNATURE (See Instruction 6)

Under penalties of perjury, I declare that I have been authorized by the above-named corporation to make this application, that to the best of my knowledge and belief the statements made herein are true and correct, and that I am: ☒ an officer of the corporation; ☐ an agent enrolled to practice before the Internal Revenue Service; ☐ an attorney in good standing of the bar of the highest court of ..... (Specify jurisdiction); or ☐ a certified public accountant duly qualified to practice in (Specify jurisdiction)

By Samuel Palatella Pres. 1/12/73
(Signature) (Date)

A Copy of This Application Must Be Attached to the Corporation's Income Tax Return

Form **7004** (Rev. 9-69)

DEBTOR'S EXHIBIT "1" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1972

Form **3468**

Department of the Treasury
Internal Revenue Service

Computation of Job Development Investment Credit

▶ Attach to your tax return.
Use this form for—Calendar year 1971,
Fiscal years beginning in 1970 and ending in 1971, and
Fiscal years beginning in 1971 and ending in 1972.

1971

The investment credit has been restored for property ordered by the taxpayer after March 31, 1971, or acquired by the taxpayer after August 15, 1971, regardless of when ordered.

The credit has also been restored for property where construction, reconstruction, or erection was begun by the taxpayer after March 31, 1971, or where the construction, reconstruction, or erection was completed by the taxpayer after August 15, 1971, regardless of when begun. In the case of property (except pre-termination property) where construction, reconstruction, or erection is begun by the taxpayer before April 1, 1971, only that portion of the basis attributable to construction, reconstruction, or erection after August 15, 1971, is taken into account in determining the credit.

For pre-termination property eligible for credit under prior law, see the instructions for the different life years.

Name: KEVIN STEEL Products Inc

Identifying number as shown on page 1 of your tax return: 13-2573722

1 Qualified investment in new and used property (See instruction C for eligible property)
NOTE: Include your share of investment in property by a partnership, estate, trust, small business corporation, or lessor.

Type of property	Line	(1) Life years	(2) Cost or basis	(3) Applicable percentage	(4) Qualified investment (Column 2 x column 3)
New Property	(a)	3 or more but less than 5	2700.00	33⅓	900.00
	(b)	5 or more but less than 7		66⅔	
	(c)	7 or more	3677.18	100	3677.18
Used Property (See instructions for dollar limitation)	(d)	3 or more but less than 5	5122.50	33⅓	1707.24
	(e)	5 or more but less than 7		66⅔	
	(f)	7 or more	2104.74	100	2104.74

2 Total qualified investment—Add lines 1(a) through 1(f)	8389.16
3 Tentative investment credit—7% (4% for public utility property) of line 2	587.24
4 Carryback and carryover of unused credit(s). (See instruction 4 for special limitation—attach computation.)	
5 Total—Add lines 3 and 4	587.24

Limitation

6 (a) Individuals—Enter amount from line 19, page 1, Form 1040	PASSED THROUGH TO SHAREHOLDERS
(b) Estates and trusts—Enter amount from line 24 or 25, page 1, Form 1041	
(c) Corporations—Enter amount from line 7, Schedule J, Form 1120	
7 Individuals, estates, and trusts: (a) Foreign tax credit	
(b) Retirement income credit	
8 Total—Add lines 7(a) and (b)	
9 Line 6 less line 8 (Married persons filing separately, controlled corporate groups, estates and trusts, see instruction 10)	
10 (a) Enter amount on line 9 or $25,000, whichever is lesser	
(b) If line 9 exceeds $25,000, enter 50% of the excess	
11 Total—Add lines 10(a) and (b)	
12 Investment credit—Enter amount from line 5 or line 11, whichever is lesser	

Schedule A

If any part of your investment in 1 above was made by a partnership, estate, trust, small business corporation, or lessor, complete the following:

Name (Partnership, estate, trust, etc.)	Address	Property: New	Property: Used	Life years
		$	$	

DEBTOR'S EXHIBIT "2" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1970

EXTENSION ATTACHED

Form 1120S — Department of the Treasury, Internal Revenue Service

U.S. Small Business Corporation Income Tax Return

for the calendar year 1969 or other taxable year beginning NOVEMBER 1, 1969, ending OCTOBER 31, 1970

1969

A Date of election as small business corporation: 11/66

B Business Code No. (see instructions): 3440

Name: KEVIN STEEL PRODUCTS INC

Number and street: BEACH ROAD PO BOX 611

City or town, State, and ZIP code: WEST HAVERSTRAW, NEW YORK 10993

C Employer identification no.: 13-2573722

D County in which located: ROCKLAND

E Enter total assets from line 14, column D, Schedule L: $ 507467.74

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction M.

GROSS INCOME	1	Gross receipts or gross sales 1475282.22 Less: returns and allowances 11330.61	1,413,952.13
	2	Less: cost of goods sold (Schedule A) and/or operations (attach schedule)	1,248,375.75
	3	Gross profit	235,576.38
	4	(a) Domestic dividends	
		(b) Foreign dividends	
	5	Interest on obligations of the United States and U.S. instrumentalities	
	6	Other interest	
	7	Gross rents	
	8	Gross royalties	
	9	Gains and losses (separate Schedule D, Form 1120S)—	
		(a) Net short-term capital gain reduced by any net long-term capital loss	
		(b) Net long-term capital gain reduced by any net short-term capital loss (if more than $25,000, see instructions)	
		(c) Net gain (loss) from sale or exchange of property other than capital assets	
	10	Other income (attach schedule)	
	11	Total income, lines 3 through 10	235,576.38
DEDUCTIONS	12	Compensation of officers (Schedule E)	20059.17
	13	Salaries and wages (not deducted elsewhere)	22,040.86
	14	Repairs (do not include capital expenditures)	1868.79
	15	Bad debts (Schedule F if reserve method is used)	8381.10
	16	Rents	7736.63
	17	Taxes (attach schedule)	23,255.04
	18	Interest	29,632.67
	19	Contributions (not over 5% of line 28 unless carried over per instructions—attach schedule)	
	20	Casualty or theft losses (attach schedule)	
	21	Amortization (attach schedule)	132.67
	22	Depreciation (Schedule G)	17,365.51
	23	Depletion (attach schedule)	
	24	Advertising	
	25	(a) Pension, profit-sharing, stock bonus, annuity plans (attach Form(s) 2950)	
		(b) Other employee benefit plans (see instructions)	
	26	Other deductions (attach schedule)	95109.91
	27	Total deductions on lines 12 through 26	214,779.60
	28	Taxable income, line 11 less line 27	15,796.78
TAX	29	Income tax: (a) On capital gains (Schedule J)	
		(b) Surcharge—enter 10% of line 29(a) (Fiscal year corporations: see instructions for Schedule J)	
	30	Credits: (a) Tax deposited—Form 7004 application for extension (attach copy)	
		(b) Credit for U.S. tax on nonhighway gas and lube oil (attach Form 4136)	
	31	TAX DUE (line 29 less line 30). See instruction G for Tax Deposit System	
	32	OVERPAYMENT (line 30 less line 29)	

WORKFILE COPY

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

Date — Signature of officer — Title

Date — Individual or firm signature of preparer — Address — Debtor Exh. 2 In Ev. 11/17/71 J

DEBTOR'S EXHIBIT "2" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1970

Form 1120S (1969) Page 2

Schedule —COST OF GOODS SOLD (See instructions 2)

Method of inventory valuation (specify)—

1 Inventory at beginning of year	87904.10	5 Total of lines 1 through 4	1327420.51
2 Merchandise bought for manufacture or sale	322166.31	6 Less inventory at end of year	81044.76
3 Salaries and wages	382151.20	7 Cost of goods sold (enter here and on line 2, page 1)	1248375.75
4 Other costs (attach schedule)	535198.84		

Schedule E— COMPENSATION OF OFFICERS (See instruction 12)

1. Name of officer	2. Social security number	3. Title	4. Time devoted to business	5. Percentage of corporation stock owned	6. Amount of compensation	7. Expense account allowances
ROBERT PALATNIK	076-22-8325	PRES.	MASTER	ALL	200514	
Total compensation of officers (enter here and on line 12, page 1)					200514	

Schedule F—BAD DEBTS—RESERVE METHOD (See instruction 15)

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve: 4. Current year's provision	Amount added to reserve: 5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1964.						
1965.						
1966.						
1967.	66 715 46		1613.20	—	-	1613.20
1968.	126 361 77		NONE	NONE	NONE	1613.20
1969.	285 054 96		8381.10	NONE	4257.30	5737.00

Schedule G—DEPRECIATION (See instruction 22)

Taxpayers using Revenue Procedures 62-21 and 65-13: Make no entry in column 2. Enter the cost or other basis of assets held at the end of the year in column 3, and enter the accumulated depreciation at the end of the year in column 4.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)						
Buildings						
Furniture and fixtures	VAR	3446.09	621.81	S.L	10%	249.61
Transportation equipment	VAR	28211.07	9319.90	SL	4yrs	6350.00
Machinery and other equipment	VAR	5146.66	827.37	SL	6yrs	769.63
Other (specify)						
LEASEHOLD IMP.	VAR	10186.75	2480.45	SL	10%	1018.68
BANK CARDS	VAR	93534.53	938.36	SL	5%	1677.67
2 Totals		126,892.11				17365.59
3 Less amount of depreciation claimed in Schedule A and elsewhere on return						
4 Balance—enter here and on line 22, page 1						17365.59

Schedule H—SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first-year (Section 179)	Other (specify)	Total
1 Under Rev. Procs. 62-21 and 65-13							
2 Other	17365.59						17365.59

Schedule J—TAX COMPUTATION (See instructions)

1 Taxable income (line 28, page 1)		
2 (a) Enter 48 percent of line 1 (members of controlled groups, see instructions)	6,500.00	
(b) Subtract $6,500 and enter difference		
3 Net long-term capital gain reduced by net short-term capital loss (line 9(b), page 1)		25,000.00
4 Subtract $25,000. (or statutory minimum)		
5 Balance (line 3 less line 4)		
6 Enter 25 percent of line 5		
7 Income tax (line 2 or line 6, whichever is lesser). Enter here and on line 29(a), page 1		

DEBTOR'S EXHIBIT "2" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1970

Form 1120S (1970) Page 3

Schedule K—SHAREHOLDERS' SHARES OF INCOME (See instructions)
Computation of Corporation's Undistributed Taxable Income

1 Taxable income (line 28, page 1)	15776.78
2 Less: (a) Money distributed as dividends out of earnings and profits of the taxable year	
(b) Tax imposed on certain capital gains (line 29, p. 1)	
3 Corporation's undistributed taxable income	15776.78

Schedule of Distribution and Income

	1. Name of each shareholder	Social security number	2. Stock ownership: Number of shares	Period held: From	To	3. Percentage of time devoted to business
(a)	ROBERT PABIANIK	076-28-8325	60	11/1/66	10/31/70	100%
(b)						
(c)						
(d)						
(e)						
(f)						
(g)						
(h)						
(i)						
(j)						

Continuation of Schedule of Distribution and Income

	4. Compensation	5. Dividends: Date	Amount	6. Share of undistributed taxable income or net operating loss	7. Share of net long-term capital gain minus net short-term capital loss (See instructions)	8. Dividends entitled to exclusion	9. Amount taxable as ordinary income	10. Nondividend distributions: Date	Amount
(a)	9005.04	-	-	15776.78			15776.78		5543.56
(b)									
(c)									
(d)									
(e)									
(f)									
(g)									
(h)									
(i)									
(j)									
Totals	9005.04			15776.78			15776.78		5543.56

F Date incorporated Nov 1966

G Did the corporation at the end of the taxable year own directly or indirectly 50 percent or more of the voting stock of a domestic corporation? Yes ☐ No ☒ (For rules of attribution, see section 267(c).)
If the answer is "Yes," attach a schedule showing:
(a) name, address, and employer identification number, and
(b) percentage owned.

H Did the corporation during the taxable year have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒
If "Yes," enter the aggregate gross dollar amount billed during the year . . . . . $

I Amount of taxable income (or loss) for: 1966 $ 6752.91; 1967 $ 64 11.54; 1968 $ 42.26 C.J.

J Refer to instructions for business activity codes and state the:
Principal business activity FAB STEEL METAL FABR.
Principal product or service STEEL FAB

K Were you a member of a controlled group subject to the provisions of sections 1561 or 1563? . . . . . Yes ☐ No ☒

L Did you claim a deduction for expenses connected with any:
(1) Entertainment facility (boat, resort, ranch, etc.)? . . . . . Yes ☐ No ☒
(2) Living accommodations (except employees on business)? . . . . . Yes ☐ No ☒
(3) Employees' families at conventions or meetings? . . . . . Yes ☐ No ☒
(4) Employee or family vacations not reported on Form W-2? . . . . . Yes ☐ No ☒

M Were you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1969? . . . . . Yes ☒ No ☐
If "Yes," where were they filed? Oakland Calif

N Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? . . . . . Yes ☐ No ☒
If "Yes," attach explanation.

O Answer only if (1) this is the first 1120S return filed since your election to be treated as a small business corporation and (2) the corporation was in existence for the taxable year prior to the election and had investment credit property:
Was an agreement filed under Section 1.47-4(b) of the Regulations? . . . . . Yes ☐ No ☐

DEBTOR'S EXHIBIT "2" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1970

Form 1120S (1968) Page 4

Schedule L—BALANCE SHEETS (See instructions)

ASSETS	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
1 Cash		4363.10		14370.23
2 Trade notes and accounts receivable	106361.87		275054.76	
(a) Less allowance for bad debts	1613.20	104748.67	5737.00	279317.76
3 Inventories		29904.10		21044.76
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule) PPD EXPS		13016.79		34092.29
6 Loans to shareholders		13807.56		
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				
9 Buildings and other fixed depreciable assets	117870.05		126843.11	
(a) Less accumulated depreciation	21569.28	96300.77	38934.87	87758.24
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)	660.34		660.34	
(a) Less accumulated amortization	399.61	261.73	540.68	129.66
13 Other assets (attach schedule) DEPOSITS		1291.97		5542.00
14 Total assets		524296.69		507461.74
LIABILITIES AND SHAREHOLDERS' EQUITY				
15 Accounts payable		123272.69		171521.95
16 Mtges., notes, bonds payable in less than 1 yr. ACCRD EXPNSES & TAXES		58731.17		43822.54
17 Other current liabilities (attach schedule)		52507.62		187700.38
18 Loans from shareholders				
19 Mtges., notes, bonds payable in 1 yr. or more		23598.65		121503.47
20 Other liabilities (attach schedule)				
21 Capital stock		10750.00		16750.00
22 Paid-in or capital surplus (attach reconciliation)				
23 Retained earnings—appropriated (attach schedule)				
24 Retained earnings—unappropriated				
25 Shareholders' undistributed taxable income		55436.56		15776.78
26 Less cost of treasury stock		( )		(43825.22)
27 Total liabilities and shareholders' equity		524296.69		507461.74

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	15776.78	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		(a) Tax-exempt interest. $	
3 Excess of capital losses over capital gains			
4 Taxable income not recorded on books this year (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)			
6 Total of lines 1 through 5	15776.78	9 Total of lines 7 and 8	
		10 Income (line 28, page 1)—line 6 less line 9	15776.78

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year		6 Distributions out of current or accumulated earnings and profits: (a) Cash	
2 Net income per books	NONE	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Current year's undistributed taxable income or net operating loss (column 6, Schedule K)	NONE
		7 Other decreases (itemize)	
4 Total of lines 1, 2, and 3		8 Total of lines 5, 6, and 7	
		9 Balance at end of year (line 4 less line 8)	

2 U.S. GOVERNMENT PRINTING OFFICE 1968-O-307-402

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

Form **1120S** — Department of the Treasury, Internal Revenue Service

U.S. Small Business Corporation Income Tax Return

for the calendar year 1970 or other taxable year beginning JANUARY 1, 1970, ending OCTOBER 31, 19 71

1970

A Date of election as small business corporation: 11/66

B Business Code No. (see page 4 of instructions): 3410

Name: KEVIN STEEL PRODUCTS INC.

Number and street: BEACH ROAD P.O. BOX 611

City or town, State, and ZIP code: WEST HAVERSTRAW, NEW YORK 10993

C Employer identification No.: 13-2572736

D County in which located: ROCKLAND

E Enter total assets from line 14, column D, Schedule L: 3,[illegible]

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instruction M.

GROSS INCOME	1	Gross receipts or gross sales 15,740,137 Less: returns and allowances [illegible]	1,507,925 21
	2	Less: cost of goods sold (Schedule A) and/or operations (attach schedule)	1,250,244 30
	3	Gross profit	257,211 41
	4	(a) Domestic dividends	
		(b) Foreign dividends	
	5	Interest on obligations of the United States and U.S. instrumentalities	
	6	Other interest	
	7	Gross rents	
	8	Gross royalties	
	9	Gains and losses (separate Schedule D, Form 1120S)—	
		(a) Net short-term capital gain reduced by any net long-term capital loss	
		(b) Net long-term capital gain reduced by any net short-term capital loss (if more than $25,000, see instructions)	
		(c) Net ordinary gain (loss)	
	10	Other income (attach schedule)	
	11	Total income, lines 3 through 10	257,211 41
DEDUCTIONS	12	Compensation of officers (Schedule E)	23,[illegible]
	13	Salaries and wages (not deducted elsewhere)	82,[illegible] 47
	14	Repairs (do not include capital expenditures)	111 [illegible]
	15	Bad debts (Schedule F if reserve method is used)	4,[illegible] 71
	16	Rents	9,524 [illegible]
	17	Taxes (attach schedule)	12,[illegible] 21
	18	Interest	21,[illegible] 33
	19	Contributions (not over 5% of line 11 adjusted per instructions—attach schedule)	
	20	Amortization (attach schedule)	
	21	Depreciation (Schedule G)	122 [illegible]
	22	Depletion (attach schedule)	12,[illegible] [illegible]
	23	Advertising	
	24	Pension, profit-sharing, stock bonus, annuity plans (attach Form(s) 2950)	
	25	Other employee benefit plans (see instructions)	
	26	Other deductions (attach schedule)	74,242 35
	27	Total deductions on lines 12 through 26	241,[illegible] 9[illegible]
	28	Taxable income, line 11 less line 27	15,[illegible] 57
TAX	29	Income tax: (a) On capital gains (Schedule J)	
		(b) Surcharge—enter 2½% of line 29(a) (Fiscal year corporations: see instructions for Schedule J)	
	30	Minimum tax (see instrs). Check here ☐ if Form 4626 is attached	
	31	Total tax (add lines 29 and 30)	
	32	Credits: (a) Tax deposited—Form 7004 application for extension (attach copy)	
		(b) Credit for U.S. tax on special fuels, nonhighway gas, and lubricating oil (attach Form 4136)	
	33	TAX DUE (line 31 less line 32). See instruction G for depositary method of payment →	[illegible]
	34	OVERPAYMENT (line 32 less line 31) →	

WORKFILE COPY

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than the taxpayer, my declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

Date ..... Signature of officer ..... Title .....

Date ..... Preparer's signature ..... Address .....

10—91250-1

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

NAME KEVIN STEEL PRODUCTS INC " 132573722

ADDRESS BEACH ROAD PO BOX 611
WEST HAVERSTRAW, NEW YORK

Taxable Year Ended 10/31/71

PAGE 1 LINE 36 - OTHER DEDUCTIONS:				
FIELD EXPENSE	7272	28		
TRAVEL + AUTO	12040	36		
DUES + SUBSCRIPTIONS	1217	73		
MEALS + ENTERTAINMENT	1201	50		
UTILITIES	3221	21		
INSURANCE	15287	92		
HOSPITALIZATION	1700	77		
LEGAL + ACCOUNTING	7843	35		
OFFICE EXPENSE	1467	89		
MISCELLANEOUS	4121	11		
POSTAGE	323	17		
SHOP EXPENSE	2727	97		
SELLING EXPENSE	2000	57		
COMMISSIONS	4500	00		
TELEPHONE + TELEGRAPH	6744	54		
TOTAL			74242	35

CYPRESS NO. 901

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

Form 1120S (1970) Page 2

Schedule A—COST OF GOODS SOLD (See instruction 2)

Method of inventory valuation (specify) ▶ FIFO Lower of COST OR MARKET

Was there any substantial change in the manner of determining quantities, costs, or valuations between opening and closing inventory? Yes ☐ No ☒. If "Yes," attach explanation.

1 Inventory at beginning of year	21 044 78	5 Total of lines 1 through 4	1338 052 98
2 Merchandise bought for manufacture or sale	430 744 96	6 Less inventory at end of year	77 508 28
3 Salaries and wages	253 135 70	7 Cost of goods sold (enter here and on line 2, page 1)	1260 544 70
4 Other costs (attach schedule)	573 127 16		

Schedule E—COMPENSATION OF OFFICERS (See instruction 12)

1. Name of officer	2. Social security number	3. Title	4. Time devoted to business	5. Percentage of corporation stock owned	6. Amount of compensation	7. Expense account allowances
ROBERT PALATNIK	076-32-6395	Pres.	WHOLE	ALL	222.	

Total compensation of officers (enter here and on line 12, page 1) . . . . . 222.

Schedule F—BAD DEBTS—RESERVE METHOD (See instruction 15)

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve: 4. Current year's provision	Amount added to reserve: 5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1965						
1966						
1967	66 715 46		1613 20	-	-	1613 20
1968	146 361 77		None	-	-	1613 20
1969	225 054 96		4 721 10		4 237.30	5 737 00
1970	473 704 16		4 483 71		4716.13	5 474 58

Schedule G—DEPRECIATION (See instruction 21)

Taxpayers using Revenue Procedures 62-21 and 65-13: Make no entry in column 2. Enter the cost or other basis of assets held at the end of the year in column 5, and enter the accumulated depreciation at the end of the year in column 4.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)						
Buildings						
Furniture and fixtures	VAR	540. 88	952.79	SL	10 %	44.25
Transportation equipment SNOP	VAR	29 527.49	015 669.76	SL	4 YR	6455.44
Machinery and other equipment	VAR	53 120.73	16277.03	SL	6 YR	2742.91
Other (specify):						
LEASED DUMP TRUC	VAR	10 126.75	3 99 13	SL	10 Y	1012.68
PICK UP CRANE	VAR	27 534.53	2516.83	SL	5 Y	1676.70
2 Totals		135 6.747				11527.21
3 Less amount of depreciation claimed in Schedule A and elsewhere on return						
4 Balance—enter here and on line 21, page 1						11538.21

Schedule H—SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Procs. 62-21 and 65-13							
2 Other	185 22.58						185.22.58

Schedule J—TAX COMPUTATION (See instructions)

1 Taxable income (line 28, page 1)		
2 (a) Enter 48 percent of line 1 (members of controlled groups, see instructions)		
(b) Subtract $6,500 and enter difference	6,500.00	
3 Net long-term capital gain reduced by net short-term capital loss (from line 9(b), page 1)		
4 Subtract $25,000. (Statutory minimum.)		25,000.00
5 Balance (line 3 less line 4) (see instructions)		
6 Enter 28 percent of line 5 (fiscal year corporations, see instructions)		
7 Income tax (line 2 or line 6, whichever is lesser). Enter here and on line 29(a), page 1		

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

NAME KEYSTONE STEEL PRODUCTS INC. "132-13722"

ADDRESS BEACH ROAD PO BOX 611
WEST HAVERSTRAW, NEW YORK

Taxable Year Ended 10/31/71

PAGE 2 SCHEDULE A LINE 4				
OTHER COSTS				
SUB CONTRACTING	428 231	56		
FREIGHT IN	41 910	69		
BLUE PRINTS	2846	60		
EQUIPMENT RENTAL	4514	51		
UNION FUNDS	31 388	32		
SHOP SUPPLIES	15 867	48		
DETAILING & ENGEERING	40 277	00		
TOTAL			577 127	16
PAGE 1 LINE 17 TAXES				
FICA	12401	69		
FUI	503	39		
NYSUI	3778	76		
DAL	126	24		
NYS FRANCHISE	1484	11		
TOTAL			18 378	21
PAGE 1 LINE 21 AMORTIZATION				
ORGANIZATION EXPENSE (660.34 x 12/60)			132	06

CYPRESS NO. 902

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

Form 1120S (1970)

Page 3

Schedule K—SHAREHOLDERS' SHARES OF INCOME (See Instructions)
Computation of Corporation's Undistributed Taxable Income

1 Taxable income (line 28, page 1)		15 637 57
2 Less: (a) Money distributed as dividends out of earnings and profits of the taxable year		
(b) Tax imposed on certain capital gains (line 31, page 1)		
3 Corporation's undistributed taxable income		15 637 57

Schedule of Distribution and Income (attach additional sheets, if necessary)

1. Name of each shareholder	Social security number	2. Stock ownership: Number of shares	Period held: From	To	3. Percentage of time devoted to business
A ROBERT PALATNIK	076-28-8325	60	11/1/66	11/11/71	NONE
B					
C					
D					

Shareholder's Share of:	Shareholder A	Shareholder B	Shareholder C	Shareholder D	Total
4 Compensation	22 500 00				22 500 00
5 Dividends paid					
6 Undistributed taxable income (loss)	15637.57				15 637 57
7 Net long-term capital gain after tax (see instructions)					
8 Dividends entitled to exclusion					
9 Ordinary income					
10 Nondividend distributions	15796.18				15796.18
11 Tax preferences:					
a Excess investment interest: (1) Investment interest expense					
(2) Investment income					
(3) Investment expense					
b Accelerated depreciation on real property: (1) Low-income rental housing (sec. 167(k))					
(2) Other real property					
c Accelerated depreciation on personal property subject to a net lease					
d Amortization of certified pollution control facilities					
e Amortization of railroad rolling stock					
f Reserves for losses on bad debts of financial institutions					
g Excess percentage depletion					
h Net long-term capital gain after tax					

F Date incorporated Nov. 1966

G Did the corporation at the end of the taxable year own directly or indirectly 80 percent or more of the voting stock of a domestic corporation? Yes ☐ No ☒. (For rules of attribution, see section 267(c).)

If the answer is "Yes," attach a schedule showing:

(a) name, address, and employer identification number; and
(b) percentage owned.

H Did the corporation during the taxable year have any contracts or subcontracts subject to the Renegotiation Act of 1951? Yes ☐ No ☒.
If "Yes," enter the aggregate gross dollar amount billed during the year . . . . . .

I Amount of taxable income (or loss) for: 1967 6418.56; 1968 12 225.21; 1969 15 796.18

J Refer to instructions for business activity codes and state the:
Principal business activity FAC. Steel Office Products
Principal product or service Steel Fab.

K Were you a member of a controlled group subject to the provisions of sections 1561 or 1562? . . Yes ☐ No ☒

L Did you claim a deduction for expenses connected with any:

(1) Entertainment facility (boat, resort, ranch, etc.)? . . . . . Yes ☐ No ☒
(2) Living accommodations (except employees on business)? . . . . . Yes ☐ No ☒
(3) Employees' families at conventions or meetings? . . . . . Yes ☐ No ☒
(4) Employee or family vacations not reported on Form W-2? . . . . . Yes ☐ No ☒

M Did you file all required Forms 1099, 1096 and 10877 . . . . . Yes ☒ No ☐

N Did the corporation, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country? Yes ☐ No ☒.
If "Yes," attach Form 4683. (For definitions, see Form 4683.)

O Answer only if (1) this is the first 1120S return filed since your election to be treated as a small business corporation and (2) the corporation was in existence for the taxable year prior to the election and had investment credit property.
Was an agreement filed under Section 1.47-4(b) of the Regulations? . . . . . Yes ☐ No ☐

10-61204-1

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

Form 1120S (1970) Page 4

Schedule L—BALANCE SHEETS (See instructions)

ASSETS	Beginning of taxable year (A) Amount	(B) Total	End of taxable year (C) Amount	(D) Total
1 Cash		19 2 [illegible] 63		21 351 11
2 Trade notes and accounts receivable	225 054 96		273 [illegible] 16	
(a) Less allowance for bad debts	5 727 00	219 317 96	5 [illegible]	268 [illegible] 09
3 Inventories		21 044 76		77 [illegible] 21
4 Gov't obligations: (a) U.S. and instrumentalities				
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule) PREPAID EXPENSES		34 077 27		31 607 70
6 Loans to shareholders				25 271 22
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				
9 Buildings and other fixed depreciable assets	126 213 11		135 [illegible] 16	
(a) Less accumulated depreciation	38 [illegible] 77	87 758 24	[illegible] 345	71 134 03
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)	663 34		663 34	
(a) Less accumulated amortization	531 68	131 66	[illegible]	[illegible]
13 Other assets (attach schedule) DEPOSITS		5 [illegible] 00		[illegible]
14 Total assets		507 [illegible] 14		526 [illegible] 71
LIABILITIES AND SHAREHOLDERS' EQUITY				
15 Accounts payable		171 521 95		272 [illegible] 50
16 Mtgs., notes, bonds payable in less than 1 year		43 122 54		150 65[illegible] 51
17 Other current liabilities (attach schedule) ACCRUED EXPENSES		129 [illegible] 41		42 717 41
18 Loans from shareholders				
19 Mtgs., notes, bonds payable in 1 year or more		121 [illegible] 41		23 [illegible] 22
20 Other liabilities (attach schedule)				
21 Capital stock		10 750 00		10 [illegible] 00
22 Paid-in or capital surplus (attach reconciliation)				
23 Retained earnings—appropriated (attach schedule)				
24 Retained earnings—unappropriated				
25 Shareholders' undistributed taxable income		15 [illegible] 71		15 [illegible] 21
26 Less cost of treasury stock		(43 [illegible] 31)		(43 [illegible] 31)
27 Total liabilities and shareholders' equity		507 467 74		526 [illegible] 71

Schedule M-1—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1 Net income per books	15 6 31 51	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		(a) Tax-exempt interest	
3 Excess of capital losses over capital gains			
4 Taxable income not recorded on books this year (itemize)		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		9 Total of lines 7 and 8	
6 Total of lines 1 through 5	15 63 [illegible] 51	10 Income (line 28, page 1)—line 6 less line 9	15 63 [illegible] 51

Schedule M-2—ANALYSIS OF UNAPPROPRIATED RETAINED EARNINGS PER BOOKS (line 24 above)

1 Balance at beginning of year		5 Distributions out of current or accumulated earnings and profits: (a) Cash	
2 Net income per books	NONE	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Current year's undistributed taxable income or net operating loss (total of line 6, Schedule K)	NONE
		7 Other decreases (itemize)	
4 Total of lines 1, 2, and 3		8 Total of lines 5, 6, and 7	
		9 Balance at end of year (line 4 less line 8)	

U.S. GOVERNMENT PRINTING OFFICE 1970-O-370-000

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

Form 3468 — Computation of Investment Credit — 1970

Department of the Treasury, Internal Revenue Service

Attach to your tax return

For the calendar year 1970 or other taxable year beginning ..., 1970, and ending ..., 19...

The investment credit has been repealed for property acquired after 4-10-69, and property whose construction, reconstruction, or erection began after that date.

Exceptions are provided, however, for certain property under or acquired under a binding contract entered into before 4-11-69, or built or acquired in certain transitional situations described in section 49 of the Internal Revenue Code. In any event, the credit will not be available for any property placed in service after 1975.

The amount of unused credits that may be carried over and claimed as a credit is subject to a special 20% limitation. See instruction for line 4.

Name: KEVIN STEEL PRODUCTS, INC.

Identifying number as shown on page 1 of your tax return: 13-2573712

1 Qualified investment in new and used property (See instruction C for eligible property)

NOTE: Include your share of investment in property by a partnership, estate, trust, small business corporation, or lessor.

Type of property	Line	(1) Life years	(2) Cost or basis	(3) Applicable percentage	(4) Qualified investment (Column 2 × column 3)
New Property	(a)	3 or more but less than 5	12,284.54	33⅓	4096.17
	(b)	5 or more but less than 7		66⅔	
	(c)	7 or more	70,375.00	100	70,375.00
Used Property (See instructions for dollar limitation)	(d)	3 or more but less than 5		33⅓	
	(e)	5 or more but less than 7		66⅔	
	(f)	7 or more		100	

2 Total qualified investment—Add lines 1(a) through 1(f) — 74,471.17

3 Tentative investment credit—7% of line 2 (3% for public utility property) — 5,213.00

4 Carryback and carryover of unused credit(s) (See instruction 4 for special limitation—attach computation) — 2,219.00

5 Total—Add lines 3 and 4 — 5,213.00

Limitation

6 (a) Individuals—Enter amount from line 21, page 1, Form 1040 — INVESTMENT

(b) Estates and trusts—Enter amount from line 27, page 1, Form 1041 — PASSED

(c) Corporations—Enter amount from line 7, Tax Computation Schedule, Form 1120 — THROUGH TO

7 Individuals, estates, and trusts: (a) Foreign tax credit — STOCKHOLDER

(b) Retirement income credit

8 Total—Add lines 7(a) and (b)

9 Line 6 less line 8

(Married persons filing separately, controlled corporate groups, estates and trusts, see instruction 10)

10 (a) Enter amount on line 9 or $25,000, whichever is lesser

(b) If line 9 exceeds $25,000, enter 50% of the excess

11 Total—Add lines 10(a) and (b)

12 Investment credit—Enter amount on line 5 or line 11, whichever is lesser

Schedule A

If any part of your investment in 1 above was made by a partnership, estate, trust, small business corporation, or lessor, complete the following:

Name (Partnership, estate, trust, etc.)	Address	Property: New	Used	Life years
		$	$	

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

CT-3 NEW YORK STATE CORPORATION FRANCHISE TAX REPORT ARTICLE 9A, TAX ONLY

(for corporations having investment or Subsidiary Capital or places of business outside New York State and all other Article 9A taxpayers not eligible to file Form CT-4)

BUREAU USE

BASED ON CALENDAR YEAR 1970 or Fiscal Year Ended OCTOBER 31 1971

File with Corporation Tax Bureau, State Campus, Albany, N. Y. 12226, within 2½ months after close of report year. Please read instructions on Pages 3 and 4 before preparing this report.

COPY OF PAGES 1 AND 4 OF YOUR FEDERAL RETURN MUST ACCOMPANY THIS REPORT

EMPLOYER IDENTIFICATION NUMBER 13-2573732

PRINT OR TYPE

Keiko Steel Products Inc

Please correct any error in address and include Zip Code →

Marsh Road P.O. Box 611
NUMBER AND STREET

West Haverstraw, New York 10993
CITY OR TOWN, STATE AND ZIP CODE

State or Country of Incorporation New York Date Nov. 2, 1966 Began Business in New York State April 1, 1966

Principal business activity Steel Fabrication & Erection Business group code number (Per Federal return) 3499

		Remittance
Amount shown on Item 12, Schedule A payable to Corporation Tax Bureau — ENTER AMOUNT PAID →		$

SCHEDULE A—COMPUTATION OF TAX and PAYMENTS OF ESTIMATED TAX

1. Allocated Net Income, Schedule B, Item 11 or Item 23	$ 17 123. 68	X 7.5%	$ 1 284 11
2. Allocated Capital, Schedule E, Item 10	$ 84 494 00	X .00125	130 87
3. Alternative—instruction 5			638 14
4. Minimum			100.00 120 63
5. Allocated Subsidiary Capital, Schedule C, Item 9	$	X .000625	
6. Tax: Largest of Items 1, 2, 3, or 4, plus Item 5—instruction 6			$ 1 481 11
7. Interest—instruction 7			
8. Additional charge—instruction 8			
9. If Item 6 is over $1,000, and application for extension has not been filed, enter 25% of Item 6—instruction 9			375 00
10. Total of Items 6, 7, 8 and 9			$ 1 856 11
11. Prior Payments for Calendar Year 1970 or fiscal 1971 only. Do not include amount entered at Item 3 on Application for Extension, Form CT-5—instruction 10			1 200 00
12. Balance Due Item 10 less Item 11			$ 656 11
13. Overpayment Item 11 less Item 10 — a. Credit to next year / b. Refund			$

WORKING COPY

SCHEDULE B—COMPUTATION AND ALLOCATION OF ENTIRE NET INCOME—Attach Copy Page 1 of your federal return and required schedules.

1. Federal Taxable Income before net operating loss deduction and special deductions	$ 15 638.37
2. Interest on Federal, State, Municipal and other obligations not included in Item 1 above—instruction 11	
3. Interest to stockholders $ less 10% or $1,000 whichever is larger—instruction 12	
4. Deductions attributable to Subsidiary Capital (Itemize on rider)—instruction 13	
5. New York State Franchise Tax deducted on your Federal return	1 484 11
6. Totals Items 1 to 5 inclusive	$ 17 123 68
7. Interest, dividends and capital gains from Subsidiary Capital (Itemize on rider) Item 13 $	
8. 50% of dividends from non-subsidiary corporations	
9. New York net operating loss deduction—instruction 14	
10. Totals Items 7, 8 and 9	
11. ENTIRE NET INCOME: Item 6 less Item 10—instruction 15	$ 17 123 68
12. If Item 11 is not correct, enter correct amount here and explain on rider—instruction 16	
13. INVESTMENT INCOME—instruction 17	
14. New York net operating loss deduction apportioned to investment income—instruction 18	
15. INVESTMENT INCOME after allocation: Item 13 less Item 14—but not more than Item 11	
16. BUSINESS INCOME for allocation: Item 11 less Item 15	
17. Allocated INVESTMENT INCOME: Item 15 X Item 2, Schedule D—instruction 19	17 123 68
18. Allocated BUSINESS INCOME: Item 16 X Item 2, Schedule G	
19. Total Allocated INCOME: Item 17 plus Item 18	17 123 68
20. New York Gain (loss) on qualified property—instruction 16 on CT-324	$ 17 123 68
21. Item 19 plus Item 20	17 123 68
22. Additional depreciation on qualified New York property. Attach CT-324	17 123 68
23. Taxable NET INCOME: Item 21 less Item 22	$ 17 123 68
Stock Allocation Percentage—Item 11, Schedule G	%

Federal return was filed on—1120 ☐, 1120-S ☒, Consolidated Basis ☐

Has the Internal Revenue Service corrected any reported taxable income? ☐ Yes ☒ No Have Forms CT-3360 been filed? ☐ Yes ☐ No

CERTIFICATION OF AN ELECTED OFFICER OF THE CORPORATION

I hereby certify that this report, including any accompanying rider, is to the best of my knowledge and belief a true, correct and complete report.

Signature of Officer _____ Official Title _____ Date _____

ATTACH COPY OF PAGES 1 AND 4 OF YOUR FEDERAL RETURN

DEBTOR'S EXHIBIT "3" IN EVIDENCE -
TAX RETURN FOR YEAR ENDING 1971

Page 2

SCHEDULE C—SUBSIDIARY CAPITAL AND ALLOCATION

(a) DESCRIPTION OF SUBSIDIARY CAPITAL (use EACH LINE)	(b) % OF VOTING STOCK OWNED	(c) AVERAGE FAIR MARKET VALUE (Instruction 22)	(d) SUBSIDIARY'S ALLOCATION % (Instruction 22)	(e) VALUE ALLOCATED TO NEW YORK STATE (Col. (c) times Col. (d))
		$	%	$
(List others on rider)				
1. Total (including items on rider)		$	XXXXXXXXXXXXXXXX	$
2. SUBSIDIARY ALLOCATION PERCENTAGE: 1(e) divided by Item 1(c)	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	%	XXXXXXXXXXXXXXXX
3. Less current (1 year or less) liabilities attributable to subsidiary capital			XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
4. SUBSIDIARY CAPITAL: Item 1(c) minus Item 3(c)			XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
5. Allocated SUBSIDIARY CAPITAL: Item 4 X Item 2 Enter at Sch. A, Item 5				$

SCHEDULE D—INVESTMENT CAPITAL AND ALLOCATION— If your investment income and Capital Ratios are LESS than 25% you MAY leave this Schedule D blank and allocate business and investment income and capital by the business allocation percentage. For Professional Service Corporations formed under Article 15 of the Business Corporation Law the investment allocation is 100%. Such corporations need not complete this schedule.

Investment Income Ratio: Schedule B, Item 15 divided by Item 11 ____ %

Investment Capital Ratio: Schedule E, Item 6 divided by Item 5 ____ %

(a) DESCRIPTION OF INVESTMENT (list EACH STOCK AND SECURITY)	(b) NO. OF SHARES AMOUNT OF BONDS OR OTHER SECURITIES	(c) AVERAGE FAIR MARKET VALUE (Instruction 22)	(d) ISSUER'S ALLOCATION % (Instruction 22)	(e) VALUE ALLOCATED TO NEW YORK STATE (Col. (c) times Col. (d))
		$	%	$
(List others on rider)				
1. Total (including items on rider)		$	XXXXXXXXXXXXXXXX	$
2. INVESTMENT ALLOCATION PERCENTAGE: Item 1(e) divided by Item 1(c)	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	%	XXXXXXXXXXXXXXXX
3. Obligations of the U.S. and its instrumentalities, and of N. Y. its political subdivisions and instrumentalities			XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
4. Cash (Optional)—Instruction 17			XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
5. Total: Items 1, 3 and 4			XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
6. Less current (1 year or less) liabilities attributable to Investment Capital			XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
7. INVESTMENT CAPITAL: Item 5 minus Item 6		$	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

SCHEDULE E—COMPUTATION AND ALLOCATION OF CAPITAL—Attach Copy Page 4 of your federal return.

	(a) Beginning of Year	(b) End of Year	(c) Average Fair Market Value (Instruction 20)
			Basis ANNUAL
1. Total Assets	$ 507 469 77	$ 536 135.49	$ 521 802.61
2. Current Liabilities—See Instruction 21	403 344.87	411 370.55	407.12
3. Total Capital: Item 1 less Item 2			87 494.87
4. SUBSIDIARY CAPITAL: Schedule C, Item 4			none
5. Business and Investment Capital: Item 3 minus Item 4			87 494.87
6. INVESTMENT CAPITAL: Schedule D, Item 7			
7. BUSINESS CAPITAL: Item 5 minus Item 6			87 494.87
8. Allocated INVESTMENT CAPITAL: Item 6 X Item 2, Sch. D			
9. Allocated BUSINESS CAPITAL: Item 7 X Item 5, Sch. G			87 494.87
10. Total Allocated BUSINESS and INVESTMENT CAPITAL: Item 8 plus Item 9 Enter at Sch. A, Item 2			$ 87 494.87
11. Such Allocation Percentage: Item 10 plus Item 5, Schedule C, divided by Item 3, Schedule E			%

SCHEDULE F—OFFICERS (appointed or elected) AND CERTAIN STOCKHOLDERS—Include all officers, whether or not receiving any compensation, and every stockholder owning in excess of 5% of taxpayer's issued capital stock who received any compensation.

(Name and Address—Give actual residence (Attach rider if necessary.)	Official Title	SALARY AND ALL OTHER COMPENSATION RECEIVED FROM CORPORATION
1. ST PALATNIK Spring Valley NY	Pres	$ 22,200
7. TOTAL (including any amount on rider)		$ 22,200

Corporations organized outside New York State should complete the following with respect to capital stock issued and outstanding:

Class	Shares, $	No Par	Shares, $

RESPONDENT'S EXHIBIT "A" IN EVIDENCE -
UNAUDITED BALANCE SHEET WITH ATTACHMENTS

"EVAN. STEEL Products INC
UNAUDITED Balance Sheet
AS AT January 31 1973

Exhibit A

UNAUDITED BALANCE SHEET
AS AT JANUARY

Exhibit A

ASSETS				
Current Assets:				
Cash in bank and on hand			16625.62	
Certificate of deposit			40000.00	
Accounts Receivable - Trade		449836.13		
Less: Allowance for Bad Debts		4876.73	444959.40	
Accrued Interest			900.00	
Notes Receivable - Other than Trade			8660.00	
Inventory			74450.74	
Prepaid Expenses			19516.92	
Total Current Assets				605168.68
Fixed Assets:				
Bridge Crane & Building - Appraised Value (Note 2)			162200.00	
Shop Equipment			17297.51	
Auto, Trucks & Equipment			75156.82	
Furniture & Fixtures			6268.67	
Leasehold Improvements			3719.11	
			463043.11	
Less: Accumulated Depreciation		213763 85579.72		
Fixed Assets		35462.72 6609.28	69709.55	
Appraisal Appreciation			145084	84220.41
Total Fixed Assets (Note 1)				368822.70
Other Assets:				
Deferred Interest			4125.-	
Deposits			800.-	
Total Other Assets				5025.00
TOTAL ASSETS				979016.38

PREPARED From Books and Records By MANAGEMENT WITHOUT AUDIT.
THE Accompanying NOTES ARE AN INTEGRAL PART OF THIS STATEMENT.

Subject to comments in letter of transmittal.
The accompanying notes are an integral part of this statement
and should be considered in conjunction herewith.

RESPONDENT'S EXHIBIT "A" IN EVIDENCE -
UNAUDITED BALANCE SHEET WITH ATTACHMENTS

ACCOUNTANT SUPPLY HOUSE
GREEN TINT NO. 6677
NATURAL TONE NO. 7707

KEVIN STEEL PRODUCTS, INC
UNAUDITED
STATEMENT OF INCOME (PROFIT & LOSS)
FOR THREE MONTHS ENDING 1/31/73

EXHIBIT "B"

	Initials	Date
Prepared By		
Approved By		

Exhibit "A"
Page
R F V
1/31/74

INCOME							
SALES						622517 02	
LESS: RETURNS & ALLOWANCES						21 04 20	
TOTAL INCOME							601 47 82
DIRECT COSTS:							
INVENTORY - NOVEMBER 1, 1972						210 078 57	
MATERIALS						180 668 48	
PAYROLL				15 40 857 68 169 72		83 578 29	
RENT						3 42 00	
SUB-CONTRACTING						66 122 54	
OUTSIDE ERECTION						9 190 288	
SHOP SUPPLIES						4 766 68	
PAINT EXPENSE						3 182 88	
FREIGHT						16 773 48	
BLUE PRINTS, DETAILING & ENGINEERING				5 10 08 6 30 50 083 57 166 104		6 81 508	
UNION FUND COST						20 730 94	
TRAVEL EXPENSE						1 718 18	
FIELD EXPENSE						9 691 68	
PAYROLL TAXES						25 953 2	
~~[illegible]~~						-	
DEPRECIATION						5 581 70	
EQUIPMENT RENTAL						6 10 00	
LESS: INVENTORY - JANUARY 31, 1973						74 450 74	
COST OF GOODS SOLD							624 563 96
GROSS PROFIT (LOSS)							(23 088 14)
INDIRECT EXPENSES SCHEDULE "B"							59 357 67
INTEREST INCOME							6 00 00
PROFIT (LOSS) BEFORE DEPRECIATION ON APPRAISAL APPRECIATION							
DEPRECIATION ON APPRAISAL APPRECIATION OF ASSETS (NOTE 2)							1 612 32
NET PROFIT (LOSS) FOR THE PERIOD BEFORE TAXES							(83 498 13)
LESS PROVISION FOR INCOME TAXES							
NET PROFIT (LOSS)							

NOTES: 1. BASED ON BOOKS AND RECORDS AS MAINTAINED WITHIN THE COMPANY
THE ACCOUNTING POLICIES AND NOTES ON PAGE 2 ARE AN INTEGRAL PART OF THIS STATEMENT

RESPONDENT'S EXHIBIT "A" IN EVIDENCE -
UNAUDITED BALANCE SHEET WITH ATTACHMENTS

KEVIN STEEL PRODUCTS, INC.
UNAUDITED
COMPANY'S INDIRECT EXPENSES

THREE MONTHS ENDED 1/31/73

SCHEDULE "B"-1

Officers' Salaries	78000
Office Salaries	21876 00
Insurance	35397
Travel & Auto Expense (47500 47811)	34842
Dues and Subscriptions	2000
Business Lunches & Dinners	17441
Utilities	13621
Hospitalization Insurance	29563
Interest & Bank Charges (10996 63 98533)	108594
Legal and Accounting	25000
Miscellaneous Expense	10594
Office Expense	3156
Postage	6400
Rent	38000
Selling Expenses	
Telephone and Telegraph	12192
Repairs & Maintenance	3200
Commissions	
Payroll Taxes (91140 11137 +6136)	9160
Depreciation & Amortization (136 70 9994.80)	10852
TOTAL INDIRECT EXPENSES	59397.67

PREPARED FROM BOOKS AND RECORDS BY MANAGEMENT WITHOUT AUDIT
THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THIS STATEMENT

Subject to comments in accompanying letter.
The accompanying [illegible]
and [illegible]

RESPONDENT'S EXHIBIT "A" IN EVIDENCE -
UNAUDITED BALANCE SHEET WITH ATTACHMENTS

ACCOUNTANT SUPPLY HOUSE
GREEN TINT NO. 6007
NATIONAL FORM NO. 7707

EXHIBIT "C"

	Initials	Date
Prepared By		
Approved By		

Kevin Steel Products Inc
UNAUDITED STATEMENT OF RETAINED EARNINGS
AS AT JANUARY 31 1973

BALANCE - NOVEMBER 1, 1972					19,879.92	
NET PROFIT (LOSS) FOR PERIOD EXHIBIT "B"					(83,498.13)	
ADD: DEPRECIATION ATTRIBUTED TO REVALUED APPRECIATION OF ASSETS (NOTE) WHICH WAS INCLUDED IN EXHIBIT "B"					1612.32	
TOTAL RETAINED EARNINGS				(TRIAL BAL)	(62,658.89)	

PREPARED FROM BOOKS AND RECORDS BY MANAGEMENT WITHOUT AUDIT
THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THIS STATEMENT

351a

352a

RESPONDENT'S EXHIBIT "A" IN EVIDENCE -
UNAUDITED BALANCE SHEET WITH ATTACHMENTS

NOTE I

Corporation may avail itself of the carry back loss provision of the Internal Revenue Service Code. If current loss and current investment credit were carried back the net cash benefit to the Company would amount to approximately 14,000.00

Since it is not certain what the exact results from operations for fiscal year 10/31/73 a provision is not reflected on these statements.

KEVIN STEEL PRODUCTS INC

NOTES TO UNAUDITED FINANCIAL STATEMENT

F.Y.E. ~~JANUARY~~ 31, 1973

NOTE 2. FIXED ASSETS

BUILDING AND BRIDGE CRANE ARE PRESENTED AT APPRAISAL VALUE NET OF DEPRECIATION OF $ ~~147,301.46~~ 147689.14. THE ASSETS HAVE A COST BASIS OF $ 37,534.53 AND A NET BOOK VALUE OF $ ~~37,703.44~~ 31691.95

EXCESS OF APPRAISAL VALUE OVER BOOK VALUE OF $ ~~110,000.00~~ 115997.19

IS SHOWN SEPARATELY IN STOCKHOLDERS' EQUITY SECTION OF THE BALANCE SHEET

THE APPRAISAL APPRECIATION OF THE ASSETS WILL BE DEPRECIATION OVER THE REMAINING EICHTEEN (18) YEAR LIFE OF SUCH ASSETS.

CURRENT PERIOD DEPRECIATION OF APPRAISAL APPRECIATION OF ASSETS AMOUNT TO $ ~~1613.32~~ 1613.32 AND IS SHOWN SEPERATELY ON UNAUDITED STATEMENT OF INCOME PROFIT AND LOSS.

Per mo 537.14

RESPONDENT'S EXHIBIT "A" IN EVIDENCE - UNAUDITED BALANCE SHEET WITH ATTACHMENTS

RESPONDENT'S EXHIBIT "B"
IN EVIDENCE - CONTRACT

IT IS HEREBY STIPULATED AND AGREED by and between KEVIN STEEL PRODUCTS, INC. (hereinafter "Company") and SHOPMEN'S LOCAL UNION #455, IABSOIW, AFL-CIO (hereinafter "Union") as follows:

1. The present collective bargaining agreement between the parties effective July 1, 1970 which by its terms expires June 30, 1973 is hereby extended to and including June 30, 1974 with the modifications set forth below. However, should the Local 455 Standard Independent Agreement (hereinafter "Independent Agreement") effective subsequent to June 30, 1973, cover a longer period than above provided, the extended agreement between the parties shall conform to the expiration date of the Independent Agreement.

2. The extended agreement between the parties shall be modified to include all changes in terms and conditions of employment, all increases in wages, fringe benefits, additional contributions to the Funds, and any reduction in hours which may be provided for in the Independent Agreement, such modifications to be in the same amounts and on the

same effective dates as provided in the Independent Agreement.

3. The Company agrees that regardless of any increased benefit concerning welding shields or safety shoes provided in the Independent Agreement effective subsequent to July 1, 1973, the Company will, effective July 1, 1973, provided not less than the welding shields and safety shoes called for in the current Independent Agreement.

4. The Union agrees that it will not engage in any strike against the Company for the duration of its contract as herein extended, except as is specifically permitted under the terms thereof, except if the Company performs the work of or acts as a subcontractor for any other Company against which the Union is conducting a strike, in which event the Union may remove its members from the plant until such work or subcontracting is discontinued and also pays the employees who are on strike their regular rate of pay for all time not worked during such strike.

Dated: New York, New York

1973

RESPONDENT'S EXHIBIT "B"
IN EVIDENCE - CONTRACT

KEVIN STEEL PRODUCTS, INC.

BY: _____

SHOPMEN'S LOCAL UNION #455,
IABSOIW, AFL-CIO

BY: _____

AGREEMENT

between

SHOPMEN'S LOCAL UNION NO. 455

of the

INTERNATIONAL ASSOCIATION OF

BRIDGE, STRUCTURAL

AND ORNAMENTAL IRON WORKERS

(Affiliated with A.F.L.-C.I.O.)

and

_____

Name of Company

_____

City State

Effective Date July 1, 1973

AGREEMENT

THIS AGREEMENT, executed and effective as of the.....day of .....

19...., by and between .....

(Name of Company)

.....

.....

(Street Address)

.....

(City) (State)

(including its successor or assigns), hereinafter referred to as the "Company," and Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (AFL-CIO), hereinafter referred to as the "Union," as the agent for and acting in behalf of the Company's production and maintenance employeees, as the terms "production and maintenance employees" are defined in Section 1 hereof.

Should the Company sell its plant or plants covered by the Agreement to a Company which does not have a contract with the Union, or should the Company sell or merge its plant or plants or operations with a Company which does not have a contract with the Union, the purchaser of such plant or plants, and/or the merged Company shall abide by the terms set forth in this Agreement, beginning with the date of purchase or merger until this Agreement expires.

Should the Company move its plant or plants to a new location or locality outside the Metropolitan area, or merge its operations with those of another

Company located outside the Metropolitan area which does not have a contract with the Union, or sell its operations to a Company located outside the Metropolitan area which does not have a contract with the Union, the Company, merged Company, or purchaser shall continue to be bound by the terms of this Agreement until its expiration date.

WITNESSETH THAT THE PARTIES HAVE AGREED AS FOLLOWS:

Section 1. Bargaining Unit.

This agreement shall be applicable to all production and maintenance employees including plant clerical employees of the Company (hereinafter referred to as "employees") engaged in the fabrication and/or manufacture of all ferrous and non-ferrous metals, iron, steel, and other metal products, including plastic products, also all maintenance employees of the Company engaged in maintaining machinery and equipment and other maintenance work in or about the Company's shop or shops, and to work done by such production and maintenance employees. This agreement is not intended and shall not be construed to extend to office clerical employees, superintendents, or to employees who are represented by any other union affiliated with the AFL-CIO with whom the Company has signed a collective bargaining agreement. This agreement is not intended and shall not be construed to extend to erection, installation or construction work, or to employees engaged in such work.

Section 2. International Union.

The International Association of Bridge, Structural and Ornamental Iron Workers, the parent body of the

Union (hereinafter referred to as the "International") is not a party to this agreement and similarly shall have no right to redress thereunder against the Company for the breach hereof. However, before this agreement and any amendments thereto may become binding and effective, the International must approve this agreement and/or such amendments as to form. Such approval by the International as to form shall not be construed to make the International a party to this agreement or any amendments thereto or make said International, or any of its officers or agents, responsible or liable for any breach of this agreement or any amendments thereto; and similarly such approval by the International as to form shall not be construed to give said International, or any of its officers or agents, any right of redress against the Company for breach hereof.

Section 3. Union Recognition.

The Company recognizes the Union as the exclusive representative and agent of all of the Company's production, maintenance and plant clerical employees as defined in Section 1 hereof, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

Section 4. Union Security.

(A) Each of the Company's employees included in the bargaining unit described and set forth in Section 1 hereof shall, as a condition of employment be or become a member of the Union not later than the thirty-first day following the effective date of this Agreement, or not later than the thirty-first day

following the beginning of his or her employment, whichever is the later; and each such employee shall, as a condition of continued employment, remain a member of the Union in good standing to the extent authorized by Section 8(a) (3) of the Labor Management Relations Act, 1947.

(B) Upon receipt of a written notice from the Union that an employee has not acquired membership in the Union or has not maintained his or her membership in good standing therein as provided for in Subsection (a) of this Section, the Company shall notify such employee that as a condition of employment he or she must comply with the provisions of Subsection (A) above within the next succeeding three (3) work days; and if, at the end of such three (3) work days, the employee does not furnish the Company documentary proof of compliance, such employee shall be discharged.

(C) The Company agrees that in the event that it requires additional employees in the classifications of employment covered by this Agreement, it shall hire such additional employees from an employment office operated by the Union. In the event that said employment office is unable to supply help satisfactory to the Company within three (3) working days following the request, the Company shall be free to hire in the open market. The facilities of the Employment office operated by the Union shall be made available to both members and non-members of the Union and the Union warrants that in the operation of said employment agency and in referrals to the Company it will not discriminate against any individual applicant for employment because of non-membership in the Union or otherwise restrain or coerce such applicant because of non-membership in the Union. Any employee hired from the open market shall, promptly following his employment, be required to register and secure a registration slip as

evidence of such registration at the Union employment office for the purpose of assisting the Union in administering this Agreement, and in observing and maintaining the standards desired by the Company in filling vacancies. The Company shall promptly notify the Union whenever such employees are hired.

(D) The expense of maintaining the Employment Office shall be borne by all individuals registered for employment through it. Said individuals shall be placed on a roster maintained in the Employment Office and shall be known as "Registrants." Registrants who are not members of the Union shall be required to pay a sum not in excess of the pro rata share of the expenses of maintaining and operating the Employment Office which is being borne by each Union member. Payment of his pro rata share of expenses is to be made by the Registrant to the Union at the Employment Office for each month in which he is registered. Failure of a Registrant to make such payment or to comply with the rules of the hiring hall uniformly applied (which shall not be in conflict with any applicable law), shall result in the removal of his name from the roster.

(E) 1. Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on or in any way affected by union membership, by-laws, rules, regulations, constitutional provisions, or by any other aspect or obligation of Union membership, policies, or requirements or by race, creed or color.

2. The parties to this agreement shall post in places where notice to employees and applicants for employment are customarily posted, namely at the employment office of each Company, and of the local union, all provisions relating to the functioning of the hiring arrangement.

3. Should any part hereof or any provisions herein

contained be rendered or declared illegal, invalid or an unfair labor practice by reason of an existing or subsequently enacted legislation, or by the decision of any authorized government agency, the remaining portions hereof shall not be affected thereby: provided, however, in such contingency the parties shall meet and negotiate with respect to substitute provisions for those parts or provisions rendered or declared illegal, invalid or an unfair labor practice.

Section 5. Check-off of Union Dues.

(A) Upon receipt of an authorization signed by any employee to whom this agreement is applicable, the Company shall, pursuant to the provisions of such authorization, deduct from such employee's earnings, on the first pay-day in each month, the amount owed to the Union by each such employee for Union dues; however, should any such employee have no earnings due him or her on the first pay-day in any month or should such employee's earnings be less than the amount such employee owes the Union for dues, then, in that event, the deduction shall be made from the employee's earnings on the next succeeding pay-day on which his or her earnings are sufficient to cover the amount of dues owed to the Union by such employee. On or before the 10th day of each month, the Company shall mail to the Financial Secretary of the Union a check made payable to the Union for the amount of dues the Company has withheld during such month, which shall be accompanied by a list, in duplicate, containing the names of the employees and the amount deducted from each such employee's earnings. Upon receipt of such check and list, said Financial Secretary of the Union shall sign one copy of such list, acknowledging receipt thereof, and promptly return such signed list to the Company.

(B) The Union shall keep the Company informed, writing, of the amount of dues, including the nount of delinquent dues owed by each employee, if ıy. As of the effective date of this Agreement, the nion dues are $10.00 per month. Such dues shall not e changed except in accordance with the applicable ovisions of the International Constitution and/or y-Laws of the Union and, in such event, the Finan- al Secretary of the Union shall notify the Company, writing, and the amount of monthly dues as so anged shall thereafter be deducted by the Com- any from each such employee's earnings. The forementioned authorization directing the Company make the deductions as hereinabove provided for, hen signed by an employee, shall be irrevocable for ne duration of this Agreement or for a period of one) year, whichever date occurs first; and in the event ny such employee desires to revoke such authoriza- ion on either of such dates, written notice thereof hall be given by such employee to the Company in ccordance with the applicable provisions of such uthorization; and the Company agrees to furnish the Union a copy of such notice.

(C) It is expressly understood and agreed that, pon receipt of proper proof, the Union will refund to he Company, or to the employee involved, any Union dues erroneously withheld from an employee's arnings by the Company and paid to the Union.

Section 6. Hours of Work.

Seven and one-half (7½) consecutive hours, exclusive of the lunch period shall constitute a basic workday, and five (5) days, Monday through Friday (not to exceed 37½ hours work), shall constitute a basic workweek for the first shift.

In the second and third shifts, if any, the basic

workday shall consist of six and one-half (6½) consecutive hours, exclusive of the lunch period, with pay for seven and one-half (7½) hours (one and one-sixth (1 1/6) times the regular hourly rate of the employee in question); and five (5) such basic six and one-half (6½) hour days, Monday through Friday (not to exceed thirty-two and one-half (32½) hours) shall constitute a basic workweek for such shifts.

The Company shall maintain a regular schedule for the first shift forty (40) hours of work per week, consisting of eight (8) hours per day and for the second and third shift thirty-five (35) hours of work per week, consisting of seven (7) hours per day, with pay for eight (8) hours (one and one-seventh (1 1/7) times the regular hourly rate of the employee in question), and the employees shall be obliged to work such regularly scheduled workday and workweek, and the Employer shall be obliged to maintain such workday and workweek for the entire contract period.

The regular starting time and quitting time of the various shifts, as herein provided for, may be changed from time to time by mutual agreement between the Company and the Union.

Section 7. Overtime Pay.

(A) The first one-half (½) hour of work immediately following the end of the basic workday shall be compensated for at the regular straight time hourly rate.

(B) All work done by an employee before or after the regular work hours of any shift (i.e., eight (8) hours for the first shift and seven (7) hours for all other shifts), or of the regular workweek, shall be paid for at overtime rates as hereinafter provided.

(C) Overtime pay shall be computed as follows:

Overtime rates for work performed Monday through Thursday shall be paid for at the rate of time and one-half for the first two (2) overtime hours and thereafter at the rate of double-time. Overtime rates for work performed on Friday shall be paid for at the rate of double-time, it being understood no work shall be performed Friday beyond the hours regularly worked on Fridays, except the loading and unloading of trucks, and in cases of emergencies.

(D) All work performed on Saturday and Sunday shall be paid for at the rate of double-time, it being understood that no work shall be performed on Saturdays or Sundays, except as provided in Subsection (F) below.

(E) All work done on any recognized holiday, or day observed as such, as provided in Section 8 of this Agreement, shall be paid for at three (3) times the employee's current regular straight-time hourly rate. However, employees assigned to the third shift for the day preceding such holiday, or day observed as such, shall complete such shift on the morning of such holiday at the rate applicable for the preceding day.

(F) No work shall be performed on Saturdays, Sundays, or any recognized holidays, or days observed as such, unless and until an official representative of the Union is notified verbally and confirmed in writing by a representative of the Company, such notification shall specify the names of all employees who are scheduled to work on such Saturday, Sunday or holiday or day observed as such. Should the Company fail to provide such notification, the Company shall contribute to the Union's Sick and Disabled Fund an amount equal to eight (8) hours pay for each employee who worked on such Saturday, Sunday, or holiday, or day observed as such.

(G) When employees who have acquired three (3) months of seniority are on layoff, no overtime work shall be performed (except in cases of extreme emer-

gency) which is covered by the classification in which such laid-off employee is classified.

(H) There shall be no discrimination in the assignment of overtime work; and overtime work shall, insofar as practical, be allocated equitably among the employees classified in the classification covering the work operation which is to be performed on an overtime basis. However, the shop steward shall be one of the employees assigned to overtime work.

(I) When overtime work is to be performed during the regular workweek, Monday through Friday, employees designated to perform such overtime work shall be given notice thereof no later than the end of the lunch break.

(J) There shall be no discipline imposed on any employee for his refusal to work overtime.

Section 8. Holidays.

(A) For the purpose of this Agreement, New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Fourth of July, Labor Day, Veteran's Day, Election Day, Thanksgiving Day, the day following Thanksgiving Day, the last working day before Christmas and Christmas Day or days observed as such, shall be recognized as holidays. Should any of the foregoing holidays occur on Sunday, the following Monday instead of such Sunday shall be recognized and observed as the holiday in question. No work of any description shall be performed on Labor Day, except in the case of extreme emergency.

(B) The above holidays or days observed as such, shall be paid holidays, i.e., eight (8) hours straight time shall be paid therefor when no work is performed on any of such days, regardless of the day of the week upon which any such holiday occurs, including a

holiday that occurs or is observed on Saturday. Holidays that occur during the vacation period of any employee shall be paid for in addition to vacation pay.

(C) In order for an employee to be eligible to be paid eight (8) hours straight time pay when no work is performed on any of the holidays specified in subsection (A) above, or days observed as such, he must have performed work for the Company during the scheduled workweek in which the holiday occurs or is observed, unless failure to perform work during such week was because of being on paid vacation, as hereinafter provided for in this Agreement, or because of confirmed illness or injury that occurred or commenced during the sixty (60) days immediately preceding the holiday in question, or for such other absence as shall have been authorized, directed or approved by the Company. New employees hired during the workweek in which a holiday occurs, shall not be entitled to pay for such holiday when no work is performed on such day by such employee, unless such employee performs work on a regular workday in the workweek prior to the occurrence of the holiday in question.

Section 9. Reporting Pay and/or Allowed Pay.

(A) Any employee ordered to report to work by an authorized Representative of the Company and who is not put to work, or who shall have appeared for work on a regular workday without previously having been informed by an authorized Representative of the Company not to report, shall, if able and willing to work, be paid for four (4) hours at the applicable rate for such day.

(B) Any employee commencing work on any day shall, unless failure to continue to work is due to the

voluntary act or fault of the employee, or through an Act of God, be paid for not less than eight (8) hours at the applicable rate for such day. It is understood that an Act of God shall include, among other things, such things as fire of any nature, flood, failure of electricity or other sources of power beyond the control of the Company.

In the event that an Act of God prevents employees from continuing to work, the Company shall keep the employees available at the premises for two (2) hours during which they shall perform as directed. In the event that an Act of God occurs during the first two (2) hours the employees shall be paid a minimum of four (4) hours. If an Act of God occurs after the first two (2) hours, the men shall be paid the actual time worked plus two (2) hours, but in no event shall any employee be paid more than a full day's pay plus pay for overtime worked.

(C) Any person who is sent by the Union to the Company's shop, in response to a request made by an authorized Representative of the Company, shall, if able and willing to work and is not put to work, be paid for three (3) hours pay at the applicable rate for the work operation such person would have otherwise been assigned to, if such plant is in production.

(D) Any employee injured at the Company's plant, who is sent to a doctor and returns to work during his or her regular working hours the same day, shall be paid by the Company the applicable wage rate for such time thereby lost on such day by such employee; and if he or she shall, on any subsequent day on which he or she performs work for the Company, go to the doctor for treatment of such injury during his or her regular working hours or be called to attend a compensation hearing in such case, he or she shall be paid by the Company the applicable wage rate for such time thereby lost on such day by such employee, but in no event for more than two (2) hearings on any one in-

jury. Should an injured employee be admitted to a hospital or be instructed by the Company or the doctor to refrain from performing further work on the day such employee is injured, such employee shall receive the applicable hourly rate for the entire workday.

Section 10. Grievances and/or Arbitration Procedures.

(A) A chief Shop Steward and/or one (1) or more Shop Stewards shall be appointed by the Union from among the employees who are employed by the Company. Shop Stewards shall not be discharged or discriminated against for performing the duties required of a Steward, and in cases of layoffs and re-hires, the Chief Shop Steward shall be recognized as having a seniority status which is in excess of the seniority status of all other employees within his classification. Before a Shop Steward shall be laid off or discharged, the Company shall notify the Union, in writing, of such layoff or discharge, and a joint meeting between a designated representative(s) of the Union and a designated representative(s) of the Company shall be held to determine the justification for such layoff or discharge. If the discharge of any Steward is contested by the Union, the Steward shall remain on the job until such time as there is an arbitrator's decision sustaining such discharge providing that the Union institutes the said arbitration within five (5) days after notification of the discharge. If the Company violates this clause, the Union shall have the right to withdraw the employees, who shall suffer no loss of wages as a result thereof.

(B) The Chief Shop Steward and/or Shop Stewards shall have authority to meet with representatives of the Company, individually or as a Com-

mittee, to represent the employees covered by this agreement for the purpose of adjusting complaints, disputes or grievances which may be submitted to such Stewards by an aggrieved employee or employees. In the event such Stewards are unable to obtain proper adjustment of such complaints, disputes or grievances as a result of such meeting with representatives of the Company, the matter in question shall be referred to the Business Agent(s) of the Union for the purpose of obtaining proper settlement of the matter in question, and in the event the Business Agent(s) of the Union and representative of the Company are unable to settle such complaints, disputes or grievances, same shall be referred to arbitration as hereinafter provided for in this section.

(C) The Shop Stewards provided for and mentioned in this Section shall have and possess power and authority to act for and bind the Union, only in connection with those functions, rights, obligations, and matters provided for in this agreement. They shall not have, or be deemed to have, any other authority to act for or bind the Union.

(D) Any difference, grievance, or dispute which is not settled, as hereinabove provided for in this Section and any difference or dispute between the Company and the Union arising out of this Agreement or as to the meaning, application or alleged violation of any provision, or provisions of this agreement shall, upon request of either party to this Agreement be submitted to an arbitrator designated by the American Arbitration Association, in accordance with its rules and regulations. "The Arbitrator's decision shall be final and binding upon the employee(s) involved and upon the parties to this Agreement."

(E) The foregoing provisions for arbitration are not intended and shall not be construed as in any wise qualifying or making subject to change any term or condition of employment specifically covered by this

Agreement. The expense of the arbitrator shall be borne fifty (50%) percent by the Company and fifty (50%) percent by the Union.

Section 11. Strikes and Lockouts.

(A) The Company agrees not to cause, permit or engage in any lockout of its employees during the term of this agreement, except for refusal of the Union to submit to arbitration in accordance with Section 10, or failure on the part of the Union to carry out the award of the arbitrator. The Union agrees that it will not, nor will its members in concert, during the term of this Agreement, cause, permit, or take part in any strike, picketing, sit-down, stand-in, intentional slow-down or curtailment or restriction of production or interference with work in or about the Company's plant(s) or premises, except for refusal of the Company to submit to arbitration in accordance with Section 10, or the failure on the part of the Company to carry out the award of the arbitrator or where herein otherwise specifically provided.

(B) The term "intentional slow-down of production" shall mean a condition of willful restriction of production by an employee which is within such employee's reasonable control.

(C) Should an employee or employees engage in any strike, picketing, sit-down, stand-in, intentional slow-down or curtailment or restriction of production or interference with work in or about the Company's plant(s) or premises before a grievance has been submitted, as provided for in Section 10, or during the period a grievance is being processed, in accordance with the provisions of Section 10, including the arbitration provisions thereof, and should the Company notify the Union or any of its officers of such action, a Representative of the Union shall, as promptly as

possible, instruct such employees to forthwith cease such action and promptly return to their respective jobs and comply with the applicable provisions of this agreement.

(D) The Company agrees that in consideration of the performance by the Union as set forth in Subsection (C) above with respect to any strike, picketing, sit-down, stand-in, intentional slow-down or curtailment or restriction of production or interference with work in or about the Company's plant(s) or premises which is contrary to the provisions of this Section, there shall be no liability for damages on the part of the Union, its officers, agents, or members for breach of contract, by suit or otherwise.

(E) Employees to whom this agreement is applicable shall not be required in the course of their employment to cross any picket line established in connection with any labor dispute, nor shall any employee be discharged or disciplined for refusal to cross any such picket line.

Section 12. Plant Visitation.

Business Agents and/or other authorized representatives of the Union shall be permitted to enter the shop of any Company, to whom this agreement is applicable, without undue delay, at any time during which any employees are working for the purpose of investigating complaints and/or working conditions.

Section 13. Seniority.

(A) Employees shall be regarded as probationary employees until they have worked for the Company within the bargaining unit described and set forth in Section 1 of this agreement for a period of thirty (30)

days, and during such probationary period, such probationary employees may be laid off or discharged without reference to length of service. When employees complete the aforementioned probationary period, they shall have a seniority status in their classification in accordance with their length of continuous service from the date of hiring. Layoffs due to lack of work, illness of the employee, or for other causes not due to the voluntary act or fault of the employee shall not constitute interruptions of continuous service, as those terms are used in this Section; and the employee's seniority status shall not be affected by such interruptions; provided, however, the continuous service of any employee and his or her seniority status based thereon shall be terminated for the following reasons:

1. Absence from work for three (3) consecutive days without notifying the Company of the reason for such absence, unless the employee can prove that his or her failure to give such notice was due to circumstances beyond his or her control.
2. Failure to report for work and return to work when laid off, within seven (7) days after being notified by certified mail requesting him or her to do so. Any employee who is laid off shall keep the Company advised, in writing, of his or her current address, and the Company shall notify such employee, by certified mail addressed to such address, when an opening is available for him or her in line with his or her seniority status. Such notice shall specify the date and hour to report for work. A copy of such notice shall be given to the Shop Steward within twenty-four (24) hours after same is mailed or sent. Upon receipt of such written notice, the employee will

notify the Company whether or not he or she will report for work at the time requested.

3. Discharge for proper cause.
4. When an employee resigns, quits, or accepts a position with the Company which is not included in the bargaining unit.
5. Failure of an employee to report to work and return to work following the conclusion of an approved leave of absence, as provided for in this agreement.
6. When an employee has not performed any work for the Company, within the bargaining unit, for eighteen (18) consecutive months, for reasons other than injury or illness.

(B) In all cases of promotions (except to supervisory positions not covered by this agreement) and in all cases of increase or decrease of forces, employees shall be given preference in their classification in accordance with their length of continuous service. Employees may be given a temporary promotion with a trial period of thirty (30) days, and in such event the employees involved shall be paid the appropriate rate provided for elsewhere in this agreement for the work operation to which the employee(s) is temporarily promoted. If a layoff occurs in the classification from which the employee was promoted within ninety (90) days of that promotion, that employee must be demoted for purposes of layoff.

(C) No employee in a higher rated classification shall do the work of an employee in a lower rated classification if it results in the layoff of an employee in the lower rated classification with greater seniority.

(D) If during the term of the agreement, the Company undertakes work for which the classifications contained in this agreement are not applicable, or should a new work operation be established, or should a type of machinery be installed in the Com-

pany's plant, the operation of which would require employees to be trained therefor, then, in either of such events, preference for assignments to such work shall be given employees with the greatest length of continuous service with the Company.

(E) All layoffs of employees shall be made as a result of a reduction of forces in accordance with the provisions of the first paragraph of this Subsection, and an employee shall not be discharged except for proper cause. Employees may be required to perform any of the work which is generally covered by the classification in which he or she is classified, and if the performance of such work is in accordance with the generally recognized shop requirements, employees shall not be subject to be laid off, except as a result of a reduction of force as hereinabove provided; however, if an employee is assigned to a type of work which he has not previously performed, and if, after being given a reasonable opportunity to learn to perform such work, he or she is unable to do so, then, in that event, the employee shall be subject to be laid off, if no other work is available.

(F) When it is necessary to lay off the employees in any classification, all probationary employees classified in such classification shall be laid off before any other employees are laid off.

(G) The Company will post on its Bulletin Board lists showing the current seniority standing of each employee and will furnish the Union a copy of each such list. Revised lists will be posted every two (2) months. Any appeals from the seniority list as posted must be made within ten (10) regular work days of posting; otherwise, the list will be considered final.

(H) If any mechanic shall have greater seniority than an apprentice, the apprentice must be laid off before the mechanic. It is understood, however, in all other respects apprentices are entitled to tenure and all rights and benefits under this agreement.

(I) Any employee who has been on the payroll for one (1) week or more and who is laid off or terminated for any reason shall be notified by the Company one (1) work day in advance of such layoff or termination, except in cases of discharge for proper cause or in emergency situations; and if not so notified shall be paid for eight (8) hours at such employee's regular hourly rate. Furthermore, except in cases of temporary layoff for a period of five (5) work days or less, employees when otherwise laid off shall be allowed one-half (½) hour in which to pack their tools, etc., or, in lieu thereof, shall receive one-half (½) hour additional pay at their regular rate of pay.

Section 14. Leave of Absence.

(A) Leaves of absence without pay shall be granted by the Company to any employee (except probationary employees) without prejudice to the employee's seniority or other rights. All approval of leaves of absence shall be made in writing which shall be signed by a designated representative of the Company and the Shop Steward for the Union, copy of which shall be furnished the employee and the Union. Leaves of absence will be for a period of not more than thirty (30) days; however, it may be extended upon request by the employee, subject to the approval of such request in writing by the Company, signed by a designated representative of the Company and the Shop Steward, copies of which shall be furnished the employee and the Union.

(B) Any employee employed by the Company who is elected or appointed to an official position with the Union, which requires that he or she discontinue employment with the Company in order to perform the duties of such position, shall be granted a leave of absence, in writing, signed by a designated represen-

tative of the Company, for the period of such position, including any renewals thereof; and during the period of such leave of absence, such employee shall retain his or her seniority status and other rights for the duration thereof.

If an employee has an official position with the Union, he shall be permitted time off to perform duties.

(C) The Company shall give employees time off with pay to secure a renewal of any license which is necessary in connection with his work. The Company shall also pay for the cost of such renewal.

When the Company determines it requires additional licensed employees, it shall select the most senior qualified employee to apply for the same. The employee shall be given time off with pay to take the test and the Company shall pay for the test as well as for the license.

(D) Employees shall be granted three (3) days paid leave in case of death in the employee's immediate family. The immediate family is defined to cover the employee's spouse, parents of the employee and spouse, blood brothers and sisters of the employee and spouse, and children of the employee or spouse. Proof shall be submitted if required.

Section 15. Non-discrimination.

(A) Neither the Company nor the Union, nor any party to this agreement, shall pass, establish, or attempt to enforce any rule or regulation or requirement which would constitute a violation of this agreement, or be inconsistent or in conflict with the provisions of this agreement.

(B) There shall be no discrimination against any employee, with respect to any term of employment or otherwise, by reason of race, color, creed, sex, or age;

nor shall any employee be disciplined or discharged except for proper cause.

(C) The amount of work a member of the Union may perform shall not be restricted or interfered with by the Union or by its officers or members.

(D) Employees as a condition of continued employment shall not be required to undergo a physical examination.

Section 16. Vacations.

(a) Employees shall be entitled to the following vacation benefits with pay therefor:

One (1) year but less than two (2) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive one (1) week vacation.

Two (2) years but less than eight (8) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive two (2) weeks vacation.

Eight (8) years but less than fifteen (15) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive three (3) weeks vacation.

Fifteen (15) years but less than twenty (20) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive four (4) weeks vacation.

Twenty (20) years or more continuous service in the industry in accordance with paragraph (E) (1) below, shall receive five (5) weeks vacation.

(B) For the 1975 Vacation Period, employees shall be entitled to 110% of their vacation pay.

(C) A vacation schedule shall be posted in the

plant not later than April 15th of each year, and a vacation period shall be designated between June 1st and September 30th except that employees with children under 18 years of age shall not be obliged to take their vacation in June and such employees who do not desire a June vacation shall immediately notify the Company if they are scheduled for such a vacation whereupon they shall be assigned a new vacation in accordance with past practice in the Company. On request of an employee and consent of the Company and Union other period or periods may be selected. Such request shall not be denied except for good cause.

(D) Employees shall receive their vacation moneys from the Local 455 Industry Vacation Fund provided for in subsection (E) below. The Company shall not be responsible for vacation payments other than the stated contributions to the Vacation Fund. All companies which became members of Allied and which are not listed on Schedule A at the signing of this Agreement shall pay vacation benefits directly to their employees except to the extent assumed by the Vacation Fund under its rules and regulations.

(E) (1) Commencing July 1, 1973, the Company shall contribute seven and one-half (7½) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement, employed by the Company, to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the companies (each member of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the said Board of Trustees to an industry vacation fund to be created under an appropriate Agreement and Declaration of Trust to be operated as the "Local 455

Industry Vacation Trust Fund" for the purpose of establishing and paying for pooled vacation benefits, in accordance with a Vacation Plan and rules and regulations therefor to be adopted by the Trustees, and for the organization and administration of the Fund. The Fund, including its plan of benefits, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan.

(E) (2) Commening July 1, 1974, the Company shall contribute eight and one-half (8½) per cent of the weekly payroll of all employees who are covered by this Agreement, employed by the Company, to the Trustees of the said Local 455 Industry Vacation Trust Fund.

(E) (3) Under the said Agreement and Declaration of Trust, the Joint Board of Trustees shall provide vacation benefits and establish rules and regulations consistent with this Agreement and existent benefits and conditions.

(E) (4) Payments to the Trustees of said Local 455 Industry Vacation Trust Fund provided for in this subsection shall be made monthly and shall be paid in full by the Company not later than the tenth of each month following the month for which such payments are applicable.

(F) Employees eligible for one (1), two (2) and three (3) weeks vacation pay shall be required to take their vacation.

Employees eligible for more than three (3) weeks vacation pay shall be required to take three (3) weeks of such vacation and, by mutual agreement between the employee and the Company, the employee may refrain from taking such additional weeks vacation.

If there are any employees on layoff, then employees on the job, in the classification in which

such a layoff exists, must be given time off instead of vacation pay for weeks over three (3) in number.

Section 17. Bulletin Boards.

The Company shall provide the Union with Bulletin Board space in its plant(s), to be used for the posting of notices relating to Union matters.

Section 18. Safety and Health.

(A) A Safety and Health Committee shall be established in each plant covered by this agreement, which shall consist of a representative of the Union employed by the Company and a representative of the Company; and such Committee shall, at least once each month, make a thorough inspection of the plant for the purpose of assisting in the planning of a safety program. In the event the Safety and Health Committee discovers conditions which in its opinion, are dangerous or would adversely affect the health, life and limb of employees, such conditions shall be reported to the Company for correction and efforts to correct such conditions shall be initiated by the Company within forty-eight (48) hours. If, in the opinion of either of the members of the Safety and Health Committee, unsafe and/or unsanitary conditions exist, which would be hazardous to the employees working in such locations, such employees shall be so informed by the Committeemen and the employees will not be required to perform any further work until such conditions are corrected.

(B) Welding shield, goggles, gloves, and equipment which an employee would not normally be required to acquire shall be provided by the Company. It is

understood that the Company will also cover 50% of the cost of a standard pair of safety shoes limited to one pair a year to all active employees with three months or more of seniority. The Company shall also furnish employees, when necessary, such protective clothing as is necessary because of inclement weather.

(C) Each employee shall be furnished, by the Company, an individual locker for his clothing and tools.

All toilets and washrooms shall be kept in a clean and sanitary condition, and shall be properly heated and ventilated and adequate soap and towels shall be provided.

(D) The Company shall provide the following: Water cooler; milk when welding or burning material which is coated with paint or that is galvanized; adequate exhaust system for removal of welding fumes and dust.

Section 19. Piece, Bonus and Contract Work Prohibited.

There shall be no piece, bonus, or contract work done in the Shop and all work done shall be paid for at not less than the hourly rate of wages set forth in this agreement.

Section 20. Subletting of Work.

(A) The Company agrees not to sublet any work of a type which is normally fabricated or manufactured in its plant or plants covered by this agreement.

(B) The Company shall not perform the work of or act as a subcontractor for any employer against which the Union is conducting a strike, for the duration thereof.

Section 21. Erection and Field Fabrication.

The provisions of this agreement shall be applicable only to the employees of the Company comprising the bargaining unit described and set forth in Section 1 hereof, and to work done by such employees as described and set forth in such Section; and it is therefore specifically understood and agreed that the provisions of this agreement shall not be construed as being applicable to erection, field fabrication or construction work, or to employees engaged in such work, and the Company agrees it will not require any employee covered by this agreement to perform such work for the Company. It is understood and agreed that the foregoing provisions of this section shall not apply to Shopmen sent to the site of the construction to take measurements or to make templates.

Section 22. Pay Days.

The Company agrees to pay the employees on a regular stated pay day in each week in cash or by check during working hours. Employees shall be reimbursed once each month for the fee paid for cashing their checks provided same is cashed by a licensed check cashing agency. When an employee is laid off or discharged, he shall be paid off immediately in cash or by check. The Company is required to install a time clock and time cards in order to keep proper record of employees time worked. The Company must keep time cards and all other payroll records available for at least three (3) years.

Section 23. Saving Clause.

It is assumed by the parties hereto that each provision of this agreement is in conformity with all

applicable laws of the United States and the State of New York. Should it later be determined that it would be a violation of any legally effective Governmental or State Order or Statute to comply with any provision or provisions of this agreement, the parties hereto agree to renegotiate such provision or provisions of the agreement for the purpose of making them conform to such Governmental or State Order or Statute so long as they shall remain legally effective, and the other provisions of this agreement shall not be affected thereby.

Section 24. Wage Rates and Classifications.

(A) Each employee shall be classified in that one of the hereinafter specified classifications which covers the work operation(s) such employee performs.

(B) Effective July 1, 1973, the wage rates of employees classified as "Foremen" and "Finishers" shall be increased forty-five ($.45) cents per hour, and effective July 1, 1974, the wage rate of all employees classified as "Foremen" and "Finishers" shall be increased fifty ($.50) cents per hour.

(C) Effective July 1, 1973, the wage rates of employees classified as "Mechanics" shall be increased forty ($.40) cents per hour, and effective July 1, 1974, the wages of all employees classified as "Mechanics" shall be increased forty-five ($.45) cents per hour.

(D) Effective July 1, 1973, the wage rates of employees classified as "Shop Helpers" and/or "Laborers" shall be increased thirty-five ($.35) cents per hour, and effective July 1, 1974, the wage rate of all employees classified as "Shop Helpers" and/or "Laborers" shall be increased forty ($.40) cents per hour.

There shall be at least one Foreman in each shop, and Foremen who perform work with tools shall comply with the provisions of Section 4, Subsection (A) of this Agreement with respect to membership in the Union and shall be paid not less than sixty ($.60) cents per hour above the hourly rate hereinafter specified for the classification of "Finishers".

(E) The minimum hourly rates shall be as set forth below:

	Effective 7/1/73	Effective 7/1/74
Finishers: Who work from drawings and sketches and at least one (1) finisher shall be employed for each nine (9) Mechanics	$ 6.90	$ 7.40
Mechanics Employees classified in this classification shall not be permitted to work from blue prints, drawings or sketches	6.25	6.70
Shop Helpers and/or Laborers Shop Helpers and/or Laborers shall not be permitted to handle any tools or machinery, except that Shop Helpers and/or Laborers who use air or electric sprayers to apply shop coats of paints shall receive twenty-five ($.25) cents per hour more than the minimum rate herein specified. It is further agreed that the work of Shop Helpers and/or Laborers includes the unloading and loading of trucks, moving and handling material, applying priming or shop coats, or other work incidental thereto	5.40	5.80

"Spray Painters" temporarily assigned for ten (10%) per cent or more of this time during any three (3) month period shall retain the higher rate of pay as a permanent feature of his rate.

Past practices established by custom (which are not in violation of the provisions of this Agreement) regarding the work covered by the foregoing classifications shall be maintained.

"Overhead Crane Operators" and "Boom Operators" shall be included in the classification of "Mechanics".

(F) Any employee receiving more than the minimum rate hereinabove specified for his or her classification shall not be reduced.

(G) The following provisions shall apply to "Apprentices":

	Effective 7/1/73	Effective 7/1/74
Start	$4.65	$ 5.10
After 6 months	4.80	5.25
After 1 year	5.00	5.45
After 1½ years	5.25	5.70
After 2 years	5.55	6.00
After 2½ years	5.90	6.35
After 3 years	6.25	6.70

After completion of three (3) years of apprenticeship, the employee shall be classified in the classification of "Mechanic" and paid not less than the appropriate rate applicable to such classification.

All Apprentices shall be paid in accordance with

their previous length of service in accordance with the above schedule.

A new Apprentice shall not be employed so long as there is any Apprentice available for employment who was previously employed under the jurisdiction of the Union, irrespective of the firm by which such Apprentice was previously employed.

The number of Apprentices employed by the Company shall at no time exceed one (1) Apprentice for each six (6) other employees covered by the terms of this Agreement, exclusive of "Shop Helpers."

Apprentices shall be obliged to attend classes stipulated and approved under the Apprenticeship Program for four (4) hours, once each week during regular working hours and accordingly, shall be given time off for such purpose. Any apprentice who refuses or fails to attend classes under the rules of the Apprenticeship Fund shall be terminated as an Apprentice and shall be subject to discharge or other disciplinary action. No more than twenty-five (25%) per cent of the Apprentices employed by a Company shall attend classes at any one time. In shops that employ under four (4) Apprentices, no more than one (1) Apprentice shall attend class at any one time. Apprentices shall be considered employees of the Apprenticeship Fund during their attendance at the said classes, and while in transit between their shop and the said classes, and shall receive their pay for the four (4) hours lost from work from the Fund, provided they attend said classes.

(H) It is specifically understood and agreed that any conditions of employment or benefits applicable to employees, existing in the Company's plant, which are not specifically provided for in this Agreement and which are more beneficial to the employees than the terms and conditions set forth in this Agreement, shall be continued in full force and effect during the terms

of this Agreement, notwithstanding any provision contained in this Agreement to the contrary.

Section 25. Wash-up and Rest Periods.

There shall be one rest period of ten (10) minutes' duration, which shall be granted during the first half of each shift. Employees who work two (2) or more hours overtime shall be granted a fifteen (15) minutes rest period during the overtime period. During each of the aforementioned rest periods each employee shall be paid the applicable hourly rate, and no work shall be performed during such periods.

The last five (5) minutes of each shift shall be designated as a "wash-up period," during which no work shall be performed, and during which each employee shall be paid the applicable hourly rate.

Section 26. Welfare Fund.

(A) Commencing July 1, 1973, the Company will pay seven (7%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company, plus three (3¢) cents per hour for each straight time hour of pay paid to each of such employees, and an amount proportionate thereto for each premium hour paid —e.g., four and one-half (4½¢) cents for each time and one-half hour paid and six (6¢) cents for each double time hour paid, etc., to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the Companies (each member of the Association) and all other employers with whom the Union has collective bargaining

agreements, which money shall be applied by the said Board of Trustees to a Welfare Fund created under an Agreement and Declaration of Trust dated April 4, 1949 presently in existence, and operated as the Iron Workers Local 455 Welfare Fund.

Commencing July 1, 1974, and for the duration of this Agreement, the Company will pay eight (8%) per cent of its weekly payroll of all employees covered by this collective bargaining agreement to the said Joint Board of Trustees.

(B) Under the aforementioned Agreement and Declaration of Trust the Board of Trustees may pay, or may provide for the payment of premiums on such policies of Group Life Insurance, Group Accidental Death and Dismemberment Insurance, Group Accident and Sickness Benefits, Group Hospital, Medical, Surgical, Dental and Related Benefits for all eligible employees, their wives and their children under nineteen (19) years of age, in such manner and amounts as the Trustees may determine except, however, that the Trustees shall, out of the Funds in their possession, pay, or provide for the payment of, premiums on policy or policies of Group Insurance for Sickness Benefits, which shall provide disability insurance benefits required to be made and paid under Chapter 600 of the Laws of the State of New York, approved and effective April 13, 1949, together with amendments if any. It is further agreed that this Agreement and the specific provisions for sickness and disability benefits hereunder and such other benefits hereinabove mentioned, as the Trustees may determine shall be in lieu of any obligations imposed upon the Company signatory to this Agreement and/or its employees, for insurance and contributions required or provided for in such mentioned Law.

(C) It is further agreed that payment by the Company (including each member of "Allied" and all other firms with whom the Union has collective bar-

gaining agreements) with respect to or required by any Federal, State, or Municipal legislation which may be enacted during the term of the Agreement between the Allied Building Metal Industries and the Union, and which would require the Company to pay or contribute towards the payment of Life Insurance or Health, Hospitalization, or Medical Benefits, shall be credited to the amount required to be paid thereunder, unless the Welfare Plan effective hereunder shall furnish the benefits required by such legislation.

(D) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

Section 27. Pension Fund

(A) Commencing July 1, 1973, and continuing through June 30, 1974, the Company will pay eight (8%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company plus five (5¢) cents per hour for each straight time hour of pay paid to each of such employees, and an amount proportionate thereto for each premium hour paid e.g., seven and one-half (7½) cents for each time and one-half hour paid and ten (10¢) cents for each double time hour paid, etc., to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the Companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements, which monies shall be applied by said Board of Trustees to a Pension Fund created under an

Agreement and Declaration of Trust. Under the said Agreement and Declaration of Trust, the Board of Trustees are to provide for Pension Benefits in such manner and amounts as the Trustees may determine and establish such eligibility rules as they may determine. The plan of benefits adopted by the Trustees has heretofore been approved by the Bureau of Internal Revenue as a qualified plan.

Commencing July 1, 1974, and continuing through June 30, 1975, the Company will pay to the said Trustees the sum of ten (10%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company, to the said Board of Trustees.

(B) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

Section 28. Sick Leave Fund.

(A) Commencing July 1, 1973, and for the duration of this Agreement, the Company will pay two (2%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by said Company to a Joint Board of Trustees composed of an equal number of representatives named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. representing the Companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements, which monies shall be applied by said Board of Trustees to a Sick Leave Fund created under an Agreement and Declaration of Trust dated December 3, 1962, presently in existence, and operated as the Iron Workers Local 455 Sick Leave

Fund. Under the said Agreement and Declaration of Trust the Board of Trustees is to provide for Sick Leave Benefits in such manner and amount as the Trustees may determine and establish such eligibility rules as they may determine, which Sick Leave Benefits shall not exceed a maximum of five (5) days' sick leave at the prevailing rates of wages during any given year beginning July 1, 1973 and for the period of the duration of this Agreement to eligible participants and shall further provide that in the event an eligible participant during any given year beginning July 1, 1973, and for the period of the duration of this Agreement does not receive any Sick Leave Benefits or any part thereof during any given year, then such participant, if eligible, shall receive from the said Fund at the end of any year beginning July 1, 1973, and for the period of the duration of this Agreement, a sum of money not to exceed the maximum Sick Leave Benefits declared by the Trustees to be payable to eligible participants during any given year for the period of the duration of this Agreement.

(B) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

Section 29. Apprentice, Training-Upgrading Trust Fund.

(A) Commencing July 1, 1973, and for the duration of this Agreement, the Company will pay the sum of two ($.02) cents per hour for each straight time hour of pay paid to each of the employees covered by this Agreement, and an amount proportionate thereto for each premium hour paid—e.g., three ($.03) cents for each time and one-half hour paid and four ($.04) cents for each double time hour paid, etc., to a Joint

Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the said Board of Trustees to an apprenticeship, training and upgrading Fund created under an appropriate Agreement and Declaration of Trust and operated as "Local 455 Apprenticeship, Training-Upgrading Trust Fund", and for the organization and administration of the Fund. The Fund, including its plan of benefits and/or programs, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan. Effective July 1, 1973, and for the duration of this Agreement, the Joint Board of Trustees of the Fund shall assume all the duties of the Joint Committee heretofore in existence.

(B) Under the said Agreement and Declaration of Trust, the Joint Board of Trustees is to provide for the operation of programs to train apprentices and to upgrade or improve the skills of employees working under the jurisdiction of the Union for employers who are similarly obligated to contribute to this Fund, in such manner as the Trustees may determine and in accordance with procedures, rules and regulations to effectuate said programs.

(C) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

Section 30. Annuity Fund

(A) Commencing July 1, 1973, the Company will

pay one-half (½) of one (1%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement, employed by the Company, to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union, and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the Board of Trustees to an Annuity (Supplemental-Retirement) Fund created as the "Iron Workers Local 455 Annuity ("Supplemental-Retirement) Fund", and for the organization and administration of the Fund.

Commencing July 1, 1974, the Company will pay two (2%) per cent of its weekly payroll of all employees covered by this collective bargaining agreement to said Joint Board of Trustees.

(B) Under the Agreement and Declaration of Trust establishing the Iron Workers Local 455 Annuity (Supplemental Retirement) Fund, the Joint Board of Trustees is to provide for annuity and supplemental retirement benefits in such manner and amounts as the Trustees may determine. The Fund, including its plan of benefits, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan, and any change in the plan of benefits adopted by the Trustees shall be subject to approval by the Treasury Department.

(C) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

Section 31. Severance Pay.

(A) Effective July 1, 1973 when a Company goes out of business (voluntary or involuntary) or moves its plant a distance of 50 miles or more from its then location, or sells its operation, or merges with another company at a location 50 miles or more from its then location, its employees who are terminated as a result thereof shall be entitled to one week's severance pay for each year of service with the Company. Service shall include the employee's total seniority as evidenced by the Company's then seniority rolls. However, no employee shall be entitled to any severance pay unless he has completed 1600 hours of work with the Company involved.

(B) The Company shall be responsible for making the above severance payments. It shall continue to be responsible for the full severance payments unless and until it has made contributions to the Local 455 Severance Pay Trust Fund provided for in Subsection (C) for a period of two (2) years.

(C) Commencing July 1, 1973 and for the duration of this Agreement, the Company will pay 1% of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company, to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the said Board of Trustees to a pooled severance pay fund to be created under an appropriate Agreement and Declaration of Trust to be operated as the "Local 455 Severance Pay Trust Fund," for the purpose of establishing and paying severance pay in accordance with rules and regula-

tions to be adopted by the Trustees, and for the organization and administration of the Fund. The Fund and its rules and regulations shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan. The above contribution of 1% is the only contribution which the Company is required to make to the Fund.

(D) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

(E) After a company has made contributions to the Fund for a period of two (2) years, the Fund shall be liable to make severance payments where employees are entitled thereto, in an amount which is equal to the Company's obligation but in no event greater than five (5) times the amount contributed by the Company to the Fund, and the Company shall be responsible to pay the balance of the severance pay due, if any, directly to the employees.

(F) The Trustees will formulate a rule which will modify or alleviate the obligations of a Company to continue payments to the Fund where in the opinion of the Trustees, the Company has made contributions to the Fund sufficient to secure its employees severance pay.

(G) A rule will be formulated covering the severance rights of employees who are eligible to apply for full pension benefits.

Section 32. Trust Fund Protection.

(A) The Company shall furnish the Trustees of the Local 455 Welfare Fund, the Trustees of the Pension Fund for Iron Workers Local 455, the Trustees of the Iron Workers Local 455 Sick Leave Fund, the Trust-

ees of the Local 455 Industry Vacation Trust Fund, the Trustees of the Local 455 Apprenticeship, Training-Upgrading Trust Fund, the Trustees of the Iron Workers Local 455 Annuity (Supplemental-Retirement) Fund and the Trustees of the Local 455 Severance Pay Trust Fund, provided for in Sections 26, 27, 28, 16, 29, 30 and 31 respectively, of this Agreement with all records pertaining to the names, job classifications, social security numbers and wage information for all employees covered by this Agreement, together with such other information as may be required for the proper and efficient administration of each of the said Funds.

(B) The Company agrees to make available to the accountants for each of the aforesaid Funds any and all records which, in the discretion of the Trustees of said Funds or any one Fund, may be required to determine whether the Company has made the contributions or has made the proper contributions it is obligated to make pursuant to this Agreement.

(C) Failure of the Company to make payments in full by the tenth (10th) day of each month following the month in which the contributions are due to any of the aforesaid Funds, as specified in Sections 26, 27, 28, 16, 29, 30 and 31 of this Agreement, shall constitute a breach of this Agreement and, upon ten (10) days' written notice to the Company, the Union, notwithstanding anything to the contrary contained in this Agreement, shall have the right at any time or times thereafter to strike and remove its members from the plant of such Company until the Company pays the full amount of all moneys then due the Fund(s) involved and also pays the employees who are on strike their regular rate of pay for all time lost during any such strike. Once a Company has received such a ten (10) day notice, the right of the Union to withdraw its members without loss of pay continues for all subsequent delinquencies without requiring

that any further notice be given. Any Company which becomes delinquent with payments, as hereinabove provided, shall be required to post bond to secure future payments of such Company to the Funds.

(D) In the event a dispute arises in connection with failure of the Company to make the required payments to any of the Funds, as provided for in this Section, and in the event request is made by the Union that such dispute be submitted to arbitration, the dispute shall be submitted, to Jerome J. Lande, 292 Madison Avenue, New York, N. Y. 10017, for determination and decision, instead of to the American Arbitration Association, notwithstanding the provisions of Section 10 of this Agreement. If for any reason Jerome J. Lande is incapacitated or for any other reason unable to act, the Trustees of the Funds shall select a substitute arbitrator.The decision rendered by the designated arbitrator shall be final and binding on the Company and the Union. Should such decision sustain the Union's position, such decision shall contain a directive that the Company pay all collection expenses, including reasonable attorney fees, arbitration costs, and Court costs and other costs, if any, and in addition thereto, interest in the sum of seven and one-half (7½%) per cent of the payments due to said Funds, which amount shall be paid to the Trustees of said Funds.

(E) Resort to a remedy under this Agreement or under the Agreements and Declarations of Trust for the collection of contributions due the Funds or any one Fund, shall not be deemed a waiver of the right to resort to any other remedy provided therein or by law. Resort to one remedy at one time shall not be deemed a waiver of the right to resort to others at a future or subsequent time.

Section 33 Termination

This agreement shall become effective as of the first day of July, 1973, and shall remain in full force and effect until midnight June 30, 1975; and unless written notice of a desire for change therein or to terminate the same be given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to such expiration date, it shall continue in effect for an additional year thereafter. In the same manner, this agreement shall remain in effect from year to year thereafter, subject, however, to the right of each party to terminate it at the expiration of any such year by giving notice, in writing, to the other party at least sixty (60) days and not more than ninety (90) days prior to the expiration of such year. Should notice of termination be served, or notice of a desire for change therein be served by either party, it is agreed that a conference shall be held on the first Tuesday in May of the year such notice is served, unless some other date is mutually agreed upon.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this.....day of.....19....., in the City of New York.

SHOPMEN'S LOCAL UNION NO. 455

By William Colavito
President

By Herbert Hayes
Recording Secretary

(Name of Company)

By
(Person authorized to sign)

Approved as to Form:

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS

By A.S. Goodwin
(Official authorized to sign)

General Vice President
(Title)

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RESPONDENT'S EXHIBIT "C"
IN EVIDENCE - AGREEMENT

DECISION OF THE BANKRUPTCY JUDGE

REC... APR 1 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	In Proceedings for an Arrangement
- of -	:	No. 73 B 909
KEVIN STEEL PRODUCTS, INC.,	:	
Debtor.	:	

DECISION ON APPLICATION TO REJECT UNEXPIRED PORTION OF AN EXECUTORY COLLECTIVE BARGAINING AGREEMENT.

APPEARANCES:

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Attorneys for Shopmen's Local Union No. 455
380 Madison Avenue
New York, New York 10017

HOWARD SCHWARTZBERG, Bankruptcy Judge

DECISION OF BANKRUPTCY JUDGE

Kevin Steel Products Inc., the above-named debtor-in-possession [hereinafter referred to as the debtor] has applied to this court for an order permitting it to cancel and reject the unexpired portion of an executory collective bargaining agreement with Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO [hereinafter referred to as Local 455]. The aforesaid collective bargaining agreement had been given retroactive effective from July 1, 1973, by an order of an Administrative Law Judge at the National Labor Relations Board on November 21, 1973. Local 455 resists the debtor's application and contends that the debtor has not shown that the contract is burdensome and onerous; has not submitted a plan of arrangement, is attempting to undermine Local 455 and contravene the federal policy of encouraging the creation and enforcement of collective bargaining agreements under the National Labor Relations Act.

The matter was set down for hearing on February 21 and 22, 1974, at which time testimony was adduced and exhibits submitted in evidence. Upon the foregoing I make the following:

FINDINGS OF FACT

1. On September 13, 1973, the debtor filed with this court its petition for an arrangement under Chap-

ter XI of the Bankruptcy Act. It was and is engaged in the fabrication and distribution of structural, miscellaneous and ornamental iron and steel products and the erection thereof. Its principal place of business is located in West Haverstraw, New York. On September 13, 1973 this court entered an order under §343 of the Bankruptcy Act authorizing the debtor to operate the business, subject to this court's control.

2. In 1968, the debtor entered into its first collective bargaining agreement with Local 455, representing the debtor's production and maintenance employees, referred to by the debtor as its "shopmen." Under this agreement the debtor was permitted a grace period of two years during which time it could pay its shopmen less than the collective bargaining rate set for the debtor's industry. At the conclusion of the two year period the debtor was required to catch up to and pay the industry-wide collective bargaining rate to its shopmen.

3. Thereafter the debtor and Local 455 entered into a second collective bargaining agreement for the period from July 1, 1970 through June 30, 1973.

4. On February 15, 1973, at a time when the debtor employed approximately 15 shopmen, Local 455 ordered a strike after notice to the debtor that it was delinquent with respect to its obligated contributions to the shopmen's pension and welfare fund. The debtor then made the required

payment one week later with the result that Local 455 terminated the strike. However, the debtor did not call the shopmen back to work.

5. At the time of the strike in February, 1973, the debtor was also a party to collective bargaining agreements with two other unions; one represented its three outside erection men and the other represented its one employee in trucking. These unions are not involved in this proceeding because the debtor does not seek to set aside the collective bargaining agreements with these two unions.

6. Immediately after the strike the debtor continued to do business with one shop employee and the debtor's president, who was an experienced shopman. Negotiations with Local 455 were undertaken, with the result that in May, 1973, Local 455 submitted to the debtor a written agreement for the debtor's acceptance [Exhibit B]. The debtor would not sign this agreement. According to the testimony of the president of Local 455, the debtor's president first brought up the issue of a lower hourly wage rate for the shopmen in April or May, 1973. In any event, the proposed agreement purported to extend the debtor's current contract with Local 455 and provided that the shopmen would continue to work even if the shopmen in the industry went out on strike after the industry-wide contract expired on

June 30, 1973.

7. Thereafter Local 455 submitted to arbitration various issues, including the debtor's failure to recall its shopmen after the aforesaid strike had terminated. During the pendency of the arbitration proceeding a complaint was issued on July 31, 1973 under the aegis of the National Labor Relations Board which resulted in a decision and order dated November 21, 1973. Said order, signed by an Administrative Law Judge, declared, inter alia, that the debtor had violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act by refusing on and after June 1, 1973, to sign a document embodying the agreement of the parties; by discriminating against employees because of the insistence of their shop steward on strict enforcement of the provisions of the union contract, and by offering an employee an inducement to abandon the union.

8. The aforesaid order directed the debtor to execute the draft agreement submitted on June 1, 1973, and give it retroactive effect to July 1, 1973, making its employees whole for any loss of wages or other benefits suffered as a result of its failure to sign the agreement, together with interest at the rate of six per cent per annum.

9. The debtor concedes that it has not complied with this order; contends that it cannot financially support

the mandated retroactive agreement and seeks leave of this court for an order permitting it to cancel and reject the aforesaid collective bargaining agreement.

10. Under the terms of the collective bargaining agreement for the debtor's industry [Exhibit C], which the parties agree is substantially the same as the collective bargaining agreement which was given retroactive effect by the aforesaid order of November 21, 1973, the debtor would be obligated to pay finishers at the rate of $6.90 per hour, and $7.40 per hour effective July 1, 1974. The debtor would be required to pay mechanics at the rate of $6.25 per hour, and $6.70 per hour effective July 1, 1974. In addition, the debtor would be obligated for fringe benefit payments amounting to approximately 30% of these hourly rates, so that its payments to finishers would amount to approximately $8.97 per hour.

11. Finishers perform functions requiring a knowledge of drawings, over-all operations and must exercise some supervisory skills. The mechanics in the iron works industry weld, cut, punch, burn and fit the various iron and steel products.

12. Although the debtor continued to operate its business immediately after the strike in February, 1973 with only one shopman in addition to its president filling in as a shopman, it took on three additional shopmen in

July, 1973; one was a finisher and the other two were mechanics. Three of the four shopmen were formerly members of Local 455. According to the testimony of the debtor's president, the erstwhile Local 455 shopmen quit the union in order to stay on the job with the debtor. The debtor is now paying these four shopmen salaries ranging in rate from $3.50 per hour to $5.85 per hour, with a combined average rate of $5.85 per hour. The debtor continues to pay its outside erection man and its trucking employee in accordance with the rates under the collective bargaining compacts with their respective unions.

13. Thus, the debtor no longer has in its employ any shopmen who are members of Local 455, since all of its shopmen now in its employ are nonunion.

14. The debtor's president testified that the debtor obtained business by bidding on construction contracts where the lowest bidder was awarded the job. Most of the debtor's business evolved out of construction work in Rockland and Orange Counties in New York State. The debtor has performed on jobs ranging from $25,000 to $500,000. He further testified that at the present time there is not enough work around for everybody in the industry in this area because of the appearance of new firms in the area, generally poor economic conditions and the competition from firms outside the area with lower salary scales. In

order to compete for business, the debtor's president testified that the debtor cannot financially accept the Local 455 contract scale for shopmen and has therefore hired nonunion shopmen at lower rates and desires to continue to do business in this manner.

15. The president of Local 455 conceded that there is unemployment in the industry and there are people around who would work for less than the rates mandated under the collective bargaining contract in question. However, although he questioned whether the debtor would be able to obtain below union scale shopmen [which I find to be in consistent with his concession regarding unemployment in the industry], he then went on to explain that the lower rate might lead to inefficient help, whereas higher paid shopmen might be more efficient workers. I deem this observation mere speculation, in view of the fact that the debtor has demonstrated that it is able to obtain appropriate labor at lower rates than under the contract in question.

16. The debtor's president testified that in estimating the jobs on which bids are made, he attributes 48% of the expenses of the job to the cost for labor, of which 1/2% reflects the cost of his union trucking employee and 8% is attributable to the labor cost of the outside erection help. The president of Local 455 disagreed and said that in his opinion the 48% figure was too high and that the cost of labor should be approximately 25%, although

he said that every shop is different. In any event there is no doubt that the cost of labor is a significant factor in estimating a job for the purpose of submitting a bid for new work.

17. Both parties agree that one way to overcome high overhead costs is to operate more efficiently. Toward this end the debtor rented a Thomas spacing machine in March, 1972, on a long term basis at a rental of $1600 per month. This machine lays out the steel and punches it in accordance with drawings. The debtor's president testified that he wanted to pay workers to learn to operate the machine who were not finishers or mechanics, two of the highest paid job categories. However, Local 455 required that the learners be finishers or mechanics, with the result that, according to the debtor's president, the debtor paid top salaries for learners, so that while efficiency was low, costs were high.

18. The debtor's president testified that the debtor was further burdened by the fact that its competitors in Rockland and Orange Counties were nonunion shops, paying lower than union scale rates which enable them because of their lower labor costs to bid successfully on jobs at lower figures. The following are the nonunion shops in this category: Rockland Iron Works, Monsey Iron-

works, Fallsburg Iron and Liberty Iron. The president of Local 455 characterized these firms as small repair type shops who do not go beyond the $25,000 contract range. Nevertheless, they are competitiors of the debtor. In addition, there is New Windsor Metal Fabricators, which operates under a collective bargaining contract with the teamsters' union which provides for a lower wage scale.

19. Three other firms were mentioned as competing with the debtor in its area. One was Grossman Steel, which had a collective bargaining contract with Local 455. Another was Tri State Steel, which also had a collective bargaining contract with Local 455, but which bids on jobs mainly in New York City, according to the testimony of the debtor's president. The third firm mentioned was Poughkeepsie Ironworks, which has a collective bargaining contract with Local 455 calling for lower rates than paid by the debtor because this firm was operating under a grace period of two years, similar to the grace period that the debtor had when it first contracted with Local 455.

20. Manifestly, the majority of these competitive firms are nonunion shops with wage scales lower than the collective bargaining contract in question, thereby enabling these firms to offer lower bids in competition with the debtor because of their lower overhead. Even Poughkeepsie Ironworks, which does have a collective bar-

gaining agreement with Local 455, is currently operating under a more favorable collective bargaining agreement during its initial grace period, although this condition may change at some time in the future.

21. Most significantly, the president of Local 455, when asked if the requested relief were granted, what effect would it have on the debtor's competitors, admitted that the debtor would have an advantage over them. It is of no difference for the purpose of this determination whether the effect would be advantageous to the debtor or whether it would simply remove a current financial handicap. All that matters is that it is apparent that the debtor would be better able to compete in its area if it were not bound by the mandated salary scale under the collective bargaining contract.

22. It appears that when the debtor first entered into a collective bargaining agreement with Local 455 it operated profitably. According to the debtor's income tax return for its fiscal period beginning November 1, 1969 and ending October 31, 1970, the debtor realized taxable income of $15,796.78 on gross receipts of $1,483,952.13 [Exhibit 2]. For its fiscal year beginning November 1, 1970 and ending October 31, 1971, the debtor realized taxable income of $15,539.57 on gross receipts of $1,517,835.79 [Exhibit 3]. However, for its fiscal year beginning November 1, 1971 and ending October 31, 1972, the debtor suffered

a loss of $86,371.93 on gross receipts of $1,383,106.78 [Exhibit 1]. The remaining three months of the calendar year 1973 are reflected on an unaudited worksheet prepared by a former financial employee of the debtor, the accuracy and correctness of which the debtor disputes, which was produced pursuant to subpoena served on the debtor by counsel for Local 455. This work sheet shows a loss of $83,498.13 for November through December, 1973, on gross receipts of $601,475.82 [Exhibit A]. If accepted as correct, Exhibit A reflects an opening inventory for November, 1972 of $210,078.57. However, the debtor's tax return for the fiscal year ended October 31, 1972 [Exhibit 1] shows a closing inventory of $106,658.30. Since the closing inventory on October 31, 1972 has to be the same as the opening inventory on November 1, 1972, one of the aforesaid figures is wrong. Local 455 points out through its expert accounting witness that if the closing inventory on the tax return [Exhibit 1] were substituted for the opening inventory on the worksheet [Exhibit A], the loss for the three month figure would disappear and instead, there would be a profit of $21,000. Conversely, if the opening inventory on the work sheet [Exhibit A] were substituted for the closing inventory on the tax return [Exhibit 1] the tax return would reflect a profit of about $18,000. Since the work sheet is an unaudited document whose correctness is not

vouched for by the debtor, I would accept the sworn tax returns as a more accurate picture of the debtor's financial posture for the periods included thereunder.

23. Apart from the tax returns, it is evident that the debtor is experiencing serious financial difficulties. The debtor is not current in its payments for the rental of the Thomas spacing machine and its owes seven months back payment at the rate of $750 per month or $5250, towards the purchase of its trucks. Indeed, there is presently pending in this court a reclamation application by the seller of the trucks for immediate possession thereof.

24. This court need not determine at this juncture whether the debtor would be able to consummate a successful plan of arrangement if it were relieved of the higher wage rates provided for shopmen under the collective bargaining agreement in question. All that need be ascertained at this point is whether or not the aforesaid contract, and more specifically, the wage scale mandated thereunder, constitutes a burdensome and onerous obligation tending to impair the debtor's chances for promulgating a successful plan of arrangement.

25. Since both parties agree that the cost of labor is at least 25% of the expense of any job estimation [the debtor contending that such cost is as high as 48% of said expense], it requires no stretch of the imagination

to conclude, as this court must, that a lower labor cost, which the debtor has shown is available, is a distinct advantage to the debtor. Therefore, the collective bargaining contract in question which compels the payment of shopmen's wages at rates higher than the debtor is currently paying leads this court to the ineluctable finding that said contract constitutes a detriment to the debtor's competitive position in its industry and is therefore burdensome and onerous.

26. This court does not find, nor is there any evidence to support a finding that a rejection of the contract by the debtor as burdensome and onerous in this Chapter XI proceeding would have a domino effect in the industry, prompting additional Chapter XI proceedings by competitors seeking similar relief. Moreover, there is no evidence to support a finding that the debtor's motive for filing a petition under Chapter XI and for its application for leave to reject the aforesaid collective bargaining agreement as burdensome and onerous is mainly aimed at contravening the federal policy of encouraging the creation and enforcement of collective bargaining agreements under the National Labor Relations Act. The privilege of obtaining the rejection relief provided under §313(1) of the Bankruptcy Act by those debtors who qualify does not clash with the aforesaid federal policy because

the financially distressed debtor is not absolved from all the consequences of the rejected contract. Local 455 remains as the certified bargaining agent and also has the right under §353 of the Act to file a claim for any damages that might have been occasioned by such rejection. It should also be noted that since the strike on February 15, 1973, all of the debtor's shopmen have been and are nonmembers of Local 455. Therefore, a rejection of the collective bargaining contract in question is not going to involve collectively bargained rights affecting any of the debtor's shopmen who were in its employ at the time of the filing of its Chapter XI petition or at any time thereafter.

27. It is therefore the finding of this court that upon all of the evidence presented at the hearing in this matter, the executory collective bargaining contract with Local 455 which is the subject of the instant application, is burdensome and onerous. Said contract tends to hamper the debtor's chances of effecting a successful plan of arrangement with its unsecured creditors. Hence, the debtor should be granted leave to reject the unexpired portion thereof as permitted under §313(1) of the Bankruptcy Act.

DISCUSSION

The debtor-in-possession in this proceeding for an arrangement under Chapter XI of the Bankruptcy Act has applied to this court for an order permitting it to reject the unexpired portion of an executory collective bargaining agreement with Shopmen's Local Union 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. The application was originally opposed by Local 455 and The National Labor Relations Board. However the latter has been permitted to withdraw its application, without prejudice. Local 455 has adopted, nevertheless, the salient portions of the brief previously submitted in opposition by The National Labor Relations Board.

The debtor is engaged in the structural steel business, with its place of business in West Haverstraw, New York. It bids on contracts for work primarily in Westchester and Rockland Counties in New York State and is a party to a collective bargaining contract with Local 455 which would have terminated on June 30, 1973. However, subsequent to a short-lived strike in February, 1973, arising out of its failure to meet pension and welfare obligations, the debtor was ordered by an Administrative Law Judge of the National Labor Relations Board on November 21, 1973 to execute a draft agreement which purported to extend the aforesaid collective bargaining contract. Addi-

tionally, said order provided that the contract was to have retroactive effect to July 1, 1973. The debtor has not complied with this order and has continued to operate with nonunion shopmen subsequent to the strike in February, 1973. The debtor does not seek to reject its collective bargaining contracts with the two other unions representing the debtor's employees engaged in erection and trucking operations.

This court has found that the debtor is experiencing financial distress. Its competitors in Westchester and Rockland Counties, with lower overhead due to lower wage scales, are in a position to offer lower bids on contracts, thereby depriving the debtor of an opportunity to generate business and maintain its economic life. The debtor's attempt to overcome this disadvantage by adopting a more efficient method of production involving the rental of an expensive Thomas spacing machine, was thwarted by Local 455's insistence that workers learning to operate this machine be either finishers or mechanics, two of the highest paid job categories. Indeed, the president of Local 455 admitted that if this court were to permit the debtor to reject the contract in question, the debtor would have an advantage over its competitors. This court need not speculate to that extent but need only find, as it has, that the rejection of

said contract will eliminate the disadvantage to the debtor now created by the higher wage scale for shopmen mandated thereunder.

Local 455 does not contend that the National Labor Relations Board has preemptive jurisdiction by reason of Section 15 of the Labor Management Relations Act of 1947, 29 USC §165. In In re Klaber Bros. Inc. 173 F.Supp. 83 [S.D.N.Y. 1959] Judge Levet held that there was no conflict with the National Labor Relations Act and that there should be no differentiation in the treatment of executory employment or collective bargaining contracts as to termination under the Bankruptcy Act. In agreeing with the finding that the contract was a burden on the estate, Judge Levet permitted the rejection of the collective bargaining contract, notwithstanding the fact that the union, as in the instant case, filed with The National Labor Relations Board a charge of unfair labor practice and refusal to bargain. Judge Levet's decision in In re Klaber Bros. Inc. supra, was followed by Judge Babitt in Business Supplies Corporation of America, 73B70 [S.D.N.Y. Sept. 7, 1973] as the law in this District.

Judge Levet's holding was also cited with approval in Carpenters Local Union No. 2746 v. Turney Wood Products, Inc., 289 F.Supp. 143 [D.C. Ark. 1968], involving a straight bankruptcy case, where the court concluded that

neither the National Relations Act nor the Bankruptcy Act contains any language which would exclude collective bargaining agreements from the operation of §70b of the Bankruptcy Act. This decision was arrived at from the premise that if a collective bargaining agreement can be rejected in a Chapter X or a Chapter XI proceeding, where rehabilitation and continued operations of the debtor's business was contemplated, it naturally followed that such an agreement can be rejected in a straight bankruptcy case where the bankrupt's business was completely liquidated.

This court does not disagree with the point urged by Local 455 in its brief that, as stated by Judge Rayfiel in Overseas National Airways, Inc. 238 F.Supp. 359 [E.D.N.Y. 1965]

> "the Bankruptcy Court, when it has the power to reject a collective bargaining agreement, should do so only after thorough scrutiny, and a careful balancing of the equities on both sides, for, in relieving a debtor from its obligations under a collective bargaining agreement, it may be depriving the employees affected of their senority, welfare and pension rights as well as other valuable benefits which are incapable of forming thebasis of a provable claim for money damages."

Overseas National Airways, Inc., supra, is distinguishable from the instant case in that there the debtor's employees were covered by the Railway Labor Act, 45 U.S.C. §§151-163, 181-185, which prescribes the exclusive means by which

collective bargaining agreements may be disaffirmed. Additionally, it should be noted that this court has found that a rejection of this debtor's collective bargaining contract is not going to involve collectively bargained rights affecting any of the debtor's shopmen who were in its employ at the time of the filing of its Chapter XI petition or at any time thereafter because ever since the strike on February 15, 1973, all of the debtor's shopmen were nonunion workers.

Local 455 also urges that the debtor's application is made in an effort to undermine the union rather than a bona fide effort to straighten out its financial difficulties, citing In re Mamie Conti Gowns, Inc., 12 F.Supp. 478 [S.D.N.Y. 1935]. This court has found that the evidence does not support this claim. Manifestly, the failure of the debtor to submit a plan of arrangement at this time does not indicate a lack of good faith. Indeed, such failure is only indicative of the fact that the debtor's chances for survival hinge upon its ability to bid for business on the basis of lower overhead labor costs. In In re Mamie Conti Gowns, Inc., the court found that the debtor was not in a precarious financial position due to the disproportion of assets over liabilities as stated in the debtor's petition. The court also found that all of the debtor's employees were then members of the unions which were parties to the collective bargain-

ing contract in question, [which is not the situation in this case] and agreed with the union's contention that the debtor would "obtain an unwarranted advantage of its competitors and this will augment the number of reorganizations with the purpose of abrogating labor contracts and so, finally, result in chaos in the industry." In the instant case, the debtor's schedules list its assets valued at $488,506.24 and its liabilities at $672,344.81. The assets are patently not disproportionately greater than liabilities. Additionally, this court has found that most of the debtor's competitors in the area of its operations are nonunion. The debtor's rejection of the collective bargaining contract cannot be regarded as tending to wreck havoc in the industry. Such rejection will merely permit the debtor to compete for business under less burdensome contractual conditions which may aid, although not guaranty, its economic survival.

Local 455 has adopted the argument espoused by the National Labor Relations Board in its brief submitted prior to its withdrawal from this case, to the effect that since there should be an accommodation between the policies of the Labor Management Relations Act and the policies of Chapter XI, this court should not permit the debtor to cancel the collective bargaining agreement in its entirety. It should be noted that the debtor's rejection of this

agreement does not prejudice Local 455's right to demand that a new contract be negotiated or deprive it of its status as the certified bargaining agent. See Carpenters Local Union No. 2746 v. Turney Wood Products, Inc., supra at P. 150. Moreover under §353 of the Bankruptcy Act, Local 455 may file a claim as a creditor for any damages resulting from such rejection. In any event, Judge Levet succinctly answered this question in In re Klaber Bros., Inc. supra, when he quoted the following language from Collier on Bankruptcy, 14th Ed. Vol. 8, ¶3.15(7) at P.228:

> "An executory contract cannot be rejected in part, and assumed in part. The debtor, or the trustee, is not free to retain the favorable features of the contract, and reject only the unfavorable ones. Assumption carries with it all of the burdens as well as the benefits of the contract. The contract must be rejected in its entirety, or not at all."

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter and parties of this proceeding.

2. The collective bargaining agreement between the debtor and Shopmen's Local Union 455, International Association of Bridge, Structure and Ornamental Iron Workers (AFL-CIO), which was given retroactive effect from July 1,1973, by an order dated November 21, 1973, of an Administrative Law Judge of the National Labor Relations Board, is an executory contract within the meaning of

§313(1) of the Bankruptcy Act.

3. The aforesaid executory contract imposes upon the debtor a burdensome and onerous obligation tending to impair the debtor's chances for promulgating a successful plan of arrangement.

4. The debtor's application to reject the unexpired portion of the aforesaid executory contract under §313(1) of the Act is granted.

5. If injured by such rejection, Local 455 may file a claim as a creditor in this proceeding within 90 days from the date of entry of the order herein.

Dated: Yonkers, New York
March 1st 1974.

Howard Schwartzberg
Bankruptcy Judge.

ORDER OF THE BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

In the Matter	:	In Proceedings for an Arrangement
- of -	:	No. 73 B 909
KEVIN STEEL PRODUCTS, INC.,	:	
Debtor.	:	

- -x

At Yonkers, New York, in the said district on the 1st day of March, 1974.

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED, that the application of the debtor, pursuant to §313(1) of the Bankruptcy Act, to reject the unexpired portion of the bargaining agreement with Shopmen's Local Union 455, International Iron Workers (A.F.L.-C.I.O.), which was given retroactive affect from July, 1973 by an order dated November 21, 1973 of an Administrative Law Judge of the National Labor Relations Board, is granted, and it is further

ORDERED, if injured by such rejection said Local 455 may file a claim as a creditor in this proceeding within 90 days from the date hereof.

Howard Schwartzberg
Bankruptcy Judge

NOTICE TO APPEAL TO DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

NOTICE TO APPEAL TO DISTRICT COURT PURSUANT TO RULE 801, RULES OF BANKRUPTCY PROCEDURE

Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO ("Local 455"), a labor union and party to a collective bargaining agreement with the debtor-in-possession herein, KEVIN STEEL PRODUCTS, INC., and a respondent in debtor's application to reject the unexpired portion of said collective agreement, appeals to the United States District Court from the Decision and Order of the Hon. Howard Schwartzberg, Bankruptcy Judge, dated March 1, 1974, including the Findings of Fact and Conclusions of Law incorporated therein, which grants the debtor's application to reject the unexpired portion of the bargaining agreement with Local 455 which was given retroactive effect from July 1973 by an Order dated November 21, 1973 of an Administrative Law Judge of the National Labor Relations Board, and which Order of the Bankruptcy Judge permits the Union, if injured, to file a claim as a creditor in this proceeding.

NOTICE TO APPEAL TO DISTRICT COURT

The parties to the Order appealed from and the names and addresses of their respective attorneys are as follows:

Kevin Steel Products, Debtor-in-Possession
Represented by Guazzo, Silagi & Craner, P.C.
888 Seventh Avenue, New York, N.Y. 10019

Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers,
Represented by Sipser, Weinstock, Harper & Dorn
380 Madison Avenue, New York, N.Y. 10017

Dated: New York, N.Y.
March 11, 1974

SIPSER, WEINSTOCK, HARPER & DORN

By s/Belle Harper, member of the firm
Attorneys for Appellant
380 Madison Avenue
New York, N.Y. 10017

ATTACHMENT A TO NATIONAL LABOR RELATIONS BOARD BRIEF TO JUDGE KNAPP - DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD

MJK

209 NLRB No. 80

D-8430
West Haverstraw, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

KEVIN STEEL PRODUCTS, INC.

and Case 2--CA--13002

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL--CIO

DECISION AND ORDER

On November 21, 1973, Administrative Law Judge Sidney Sherman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

ATTACHMENT A TO NATIONAL LABOR RELATIONS BOARD BRIEF TO JUDGE KNAPP - DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1/] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor

1/ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

We hereby correct an apparently inadvertent error made in the Administrative Law Judge's Decision in par. c of Sec III, C, 3; it should read "would not let Leggio return."

Respondent contends in its brief that the second strike which began on July 1, 1973, is an economic strike. We note that no allegation was made in the complaint that the July 1 strike was an unfair labr practice strike and we, therefore, find it unnecessary to pass on the status of the strike at this time.

ATTACHMENT A TO NATIONAL LABOR RELATIONS BOARD BRIEF TO JUDGE KNAPP - DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD

Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent, Kevin Steel Products, Inc. West Haverstraw, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. MAR 8 1974

Edward B. Miller, Chairman

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

ATTACHMENT B TO NATIONAL LABOR RELATIONS BOARD BRIEF TO JUDGE KNAPP - LETTER OF KEVIN STEEL PRODUCTS, INC. DATED APRIL 15, 1974

KEVIN STEEL PRODUCTS, INC.
Beach Road
West Haverstraw, N.Y. 10993

April 15, 1974

Mr. John Zito
Financial Secretary
Shopmen's Local Union No. 455
853 Broadway
New York, New York 10003

Re: Your Letter dated April 10, 1974

Dear Mr. Zito:

In response to your letter above referred to and to the letters therein enclosed, please be advised of the following:

1. The secured creditors have sold all of the assets of Kevin Steel to various people at public auction which you attended.

2. I am presently negotiating with the purchaser of most of the physical assets for a lease arrangment so it may be possible for Kevin Steel to operate. I have not yet succeeded in working out final details.

3. I shall present a plan to the Court very shortly, dependent upon my ability to work out a lease of the plant from the new owners. I must also submit a plan of reorganization which must be approved by the creditors.

4. Dependent on my being able to operate the plant, I can offer employment to two mechanics who are certified welders and one maintenance-mechanic.

ATTACHMENT B TO NATIONAL LABOR RELATIONS BOARD BRIEF TO JUDGE KNAPP - LETTER OF KEVIN STEEL PRODUCTS, INC. DATED APRIL 15, 1974

As I view the seniority list the qualified employees for the said requirements are Burrett, Lititka and Thompson. The rate of $3.50 per hour will be available for these employees. I cannot promise any stable employment to anyone.

If you have other thoughts on this matter, please communicate with me.

As you know, the collective bargaining agreement, as directed by the National Labor Relations Board Administrative Law Judge, has been set aside by the Referee in Bankruptcy in our Chapter 11 Proceeding.

We will not make any contributions to any of your plans.

We do not anticipate the need for any other employees and reiterate that we can offer no promise of continued employment to anyone because of the uncertainty of our situation.

Very truly yours,

s/ Robert Palatnik
Robert Palatnik

RP:rn

Copies are being sent to all employees named in the April 10, 1974 letter, care of Local 455 since no return addresses wer eprovided for the employees.

To: James Szimhardt
Fred Knitter
Sal Leggio
Dennis Burrett
Victor Costillo
Walter Lititka
Alfred Thompson
Serefino Capone
George Schwendemann
Louis Viera

cc: B. Landes
National Labor Relations Board

ATTACHMENT C TO NATIONAL LABOR RELATIONS BOARD BRIEF TO JUDGE KNAPP - LETTER OF GUAZZO, SILAGI & CRANER, P.C. DATED APRIL 18, 1974

Law Offices

GUAZZO, SILAGI & CRANER, P.C.

888 Seventh Avenue
New York, N.Y. 10019
(212) 757-7100

Caesar C. Guazzo
Robert Silagi
Mitchel B. Craner

Stephen E. Klausner
Member of New York and New Jersey Bar

Our File No.
73-119 M

April 18, 1974

Mr. B. Landes
Compliance Officer
National Labor Relations Board
26 Federal Plaza- 36th Floor
New York, N.Y. 10007

Re: Kevin Steel Products, Inc.
2-CA13002

Dear Mr. Landes:

In order to bring you up to date on the status of the employer in this situation please be advised of the following:

1. The employer is still subject to Proceedings under Chapter 11 of the U.S. Bankruptcy Act.

2. The collective bargaining agreement found by the National Labor Relations Board to exist has been set aside by the Referee in Bankruptcy. I enclose a copy of his memorandum Decision for your convenience.

3. The secured creditors, which had a lien on all the physical and financial

assets of the debtor, have foreclosed on their lien and equipment at public auction. Kevin Steel now has no physical assets at all.

4. Kevin is negotiating with the purchaser of most of the equipment to see if a lease thereof can be agreed upon.

5. If such a lease can be achieved, Kevin contemplates making use of the services of two mechanics and one maintenance mechanic. This information has been conveyed to the Union and a copy thereof forwarded to your office.

6. If it operates at all, Kevin will operate under Chapter 11 auspices, without a union contract.

I repeat, Kevin has no assets at all and will try to operate despite union efforts to prevent work being subcontracted to it by other employers.

Needless to say, no evidentiary findings exist as to the employer's ability to hire anyone during the period subject to the Decision of the Board. The events which followed the hearing amply show there was no work and there is no work for most of those claiming damages.

If you have any question please call upon me.

With cordial greetings.

Very truly yours,

s/ Caesar C. Guazzo

Caesar C. Guazzo

CCG:rn
Encl.
cc: Kevin Steel Products, Inc.
Belle Harper, Esq.

DECISION AND ORDER OF
HON. WHITMAN KNAPP, U.S.D.J.,
REVERSING ORDER OF BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -x

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO,

Appellant,

- against -

KEVIN STEEL PRODUCTS, INC.,

Appellee.

- -x

A P P E A R A N C E S :

SIPSER, WEINSTOCK, HARPER & DORN
Attorneys for Appellant
380 Madison Avenue
New York, New York 10017
By: I. PHILIP SIPSER
BELLE HARPER
JEROME TAUBER,
Of Counsel

GUAZZO, SILAGI & CRANER, P.C.
Attorneys for Appellee
888 Seventh Avenue
New York, New York 10019
By: MITCHEL B. CRANER
STEPHEN E. KLAUSNER,
Of Counsel

NLRB, Intervenor
By: ABIGAIL COOLEY, Assistant General Counsel for Special Litigation
1717 Pennsylvania Avenue, N.W.
Washington, D. C. 20570

DECISION AND ORDER OF
HON. WHITMAN KNAPP, U.S.D.J.,
REVERSING ORDER OF BANKRUPTCY JUDGE

KNAPP, D.J.

Shopmen's Local Union No. 455 appeals pursuant to Bankruptcy Rules 801 et seq. from a decision of Bankruptcy Judge Schwartzberg permitting the debtor in possession pursuant to 11 U.S.C. §713(1) to reject their collective bargaining agreement. We granted permission to the NLRB to intervene on appellant's brief. Despite the evident care, fairness and thoroughness with which the proceedings below were conducted, and despite our agreement with most of the resulting findings, we are constrained to reverse.

The facts as found by the Bankruptcy judge establish in substance that the debtor is a company engaged in the steel fabricating business and obtains jobs by competitive bidding against a variety of other firms in the upstate area.

Local 455 first organized the company in 1968 and obtained a collective bargaining agreement effective through June 30, 1970, at which time a second such agreement was entered into to run through June 30, 1973.

DECISION AND ORDER OF
HON. WHITMAN KNAPP, U.S.D.J.,
REVERSING ORDER OF BANKRUPTCY JUDGE

Labor relations in the company deteriorated in early 1973. On February 15, 1973 the shopmen in the plant struck in protest of the company's failure to comply with its pension fund obligations. The company complied and the strike ended one week later, but the company refused to call the shopmen back to work.

Thereafter negotiations ensued for a new collective bargaining agreement to take effect July 1, 1973. Events during this period led to the company's refusal to execute the new contract which had been agreed to in substance and tendered to it by Local 455 on June 1, 1973. Accordingly on June 11, 1973 Local 455 filed unfair labor practice charges with the NLRB. A hearing on the complaint issued by the Board in response to these charges was held that August.

On September 13, 1973, prior to a decision upon the Board hearing, the company filed with Judge Schwartzberg a petition for an arrangement under Chapter XI of the Bankruptcy Act.

By opinion dated November 21, 1973, NLRB Administrative Law Judge Sherman ruled, upon the evidence taken the preceding August, that the debtor

company had committed unfair labor practices and ordered it to execute the collective bargaining agreement that had been agreed to with Local 455 on June 1, 1973. Judge Sherman further ordered that the agreement be given retroactive effect to July 1, 1973, and that the debtor make whole its employees with respect to any damage suffered by them because of the absence of a contract since July. In addition, Judge Sherman deferred for future clarification resolution of the status of the shopment discharged after the February 15 strike, but did find unlawful the refusal to rehire some of them.

The debtor did not comply with the order of the Administrative Law Judge. Instead on January 8, 1974 it filed its petition for permission to reject the collective bargaining agreement it had been ordered to execute and honor. On March 1, 1974, Bankruptcy Judge Schwartzberg granted the debtor's petition. On March 8th the NLRB affirmed Administrative Law Judge Sherman's Order.

This appeal thus squarely presents the question of how to reconcile the conflicting policies embodied respectively in the National Labor Relations

Act and in the Bankruptcy Act or, if such reconciliation should be impossible, the question of which policy is to here prevail.

Such question is squarely presented because we agree with Judge Schwartzberg's finding that the collective bargaining agreement - all things being equal - is sufficiently burdensome and onerous to the debtor to warrant its rejection under 11 U.S.C. §713. We find quite beside the point the argument of appellant and the NLRB that every employer considers onerous its collective bargaining agreement but is nevertheless required to honor it. That argument overlooks the salient fact that this employer has been found to be suffering financial distress sufficient to warrant the filing of a Chapter XI petition and the relief from onerous obligations that such chapter was designed to provide.

We are thus faced with two important policy decisions adopted by the Congress which in this case come into square conflict. The Bankruptcy Law provides that wherever necessary to preserve solvency the Bankruptcy Court may relieve a debtor from the burdens of any executory contract. The National Labor

Relations Act, on the other hand, provides that no collective bargaining agreement can be set aside except pursuant to the provisions of that law, which provisions were concededly not followed in the case at bar.

In concluding that the Congress intended bankruptcy policy to prevail, the Bankruptcy Judge followed such authority as there seems to be on the subject. In re Klaber Bros. Inc. (S.D.N.Y. 1959) 173 F. Supp. 83; Business Supplies Corp. of America (S.D.N.Y. 1973) 73 B 72 LC §13, 940; Carpenters Local Union No. 2746 v. Turney Wood Products, Inc. (D. C. Ark. 1968) 289 F. Supp. 143; Durand v. NLRB (W.D. Ark. 1969) 296 F. Supp. 1049; In Re Public Ledger (E.D. Pa. 1945) 63 F. Supp. 1008, rev'd. on other grounds 161 F.2d 762; In Re Mamie Conti Gowns Inc. (S.D.N.Y. 1935) 12 F. Supp. 478. However, the NLRB did not have an opportunity to present its views to any of the courts who made the decisions just cited, and we find ourselves persuaded by the arguments that the NLRB presented to us that its contrary view should prevail.

In the first place both NLRB and the debtor place great stress upon the circumstance that the

Bankruptcy Act specifically immunizes Railway Labor Act collective bargaining agreements from its reach, and is silent with respect to other labor agreements (cf. In Re Overseas National Airways, Inc. (E.D.N.Y. 1965) 238 F. Supp. 359.) Debtor contends that this difference is expressive of a considered legislative decision to treat the two differently. The NLRB, on the other hand, urges that the inclusion of the railway act exception indicates an expression of policy with respect to labor agreements, while the failure to include a similar exception with respect to labor in general is explainable as legislative oversight.

Although the legislative history can probably be read as supporting any desired result, we are on balance persuaded of the soundness of the NLRB's view. In the last analysis it seems more logical to assume that the Congress intended to distinguish collective bargaining agreements as a class from all other contracts than that it intended to make seemingly irrelevant distinctions between different kinds of labor agreements. Cf. John Wiley

& Sons v. Livingston (1963) 376 U.S. 543, United Steelworkers v Warrior & Gulf Navigation Co. (1960) 363 U.S. 574.

We accordingly do not reach the question of whether the bankruptcy judge erred in finding that because the debtor no longer has union members in its employ, no valuable rights would be jeopardized by the rejection of its contract with the union.

We are advised that the NLRB has petitioned the Court of Appeals for enforcement of its order of March 8. It would seem that such petition raises precisely the same question as here involved, and that it would therefore be appropriate to take steps to consolidate any appeal fron this order with that petition.

The order of the Bankruptcy Judge is reversed. The effect of this order is stayed for a period of fifteen days to permit the perfection of an appeal to the Court of Appeals; any application for a further stay to be made to that Court.

SO ORDERED.

Dated: New York, New York
August 1, 1974.

WHITMAN KNAPP, U.S.D.J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS,
A.F.L. - C.I.O.,

Appellant-Appellee,

-against-

KEVIN STEEL PRODUCTS, INC.,

Appellee-Appellant,

-and-

NATIONAL LABOR RELATIONS BOARD,

Intervenor.

Notice is hereby given that KEVIN STEEL PRODUCTS, INC., a corporation, the Appellee-Appellant above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the order entered in this proceeding on the 1st day of August, 1974, reversing the decision of the Bankruptcy Judge, permitting the debtor in possession to reject an executory collective bargaining agreement, and also from the District Court's allowing the National Labor

NOTICE OF APPEAL

Relations Board to intervene.

Dated: New York, New York
August 13, 1974

GUAZZO, SILAGI & CRANER, P.C.

By: s/ Mitchel B. Craner, a member
Attorneys for Appellee-Appellant
Kevin Steel Products, Inc.

TO: Sipser, Weinstock, Harper & Dorn
380 Madison Avenue
New York, New York

National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20570

JOINT MOTION FOR
CONSOLIDATION OF CASES

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

-against- No. 74-1872

KEVIN STEEL PRODUCTS, INC.,

Respondent.

SHOPMEN'S LOCAL UNION NO. 455,
INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON
WORKERS, AFL-CIO,

Appellee,

-and-

NATIONAL LABOR RELATIONS BOARD,

Intervenor,

-against- No. 74-2154

KEVIN STEEL PRODUCTS, INC.,

Appellant.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

The National Labor Relations Board, Kevin Steel Products, Inc., and Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO jointly move this

Court to consolidate the above-captioned cases. In support thereof, the Board, the Company and the Union respectfully show:

1. On March 8, 1974, the Board issued a decision and order against the Company, finding violations of Sections 8(a)(1), (3), and (5) of the National Labor Relations Act. With regard to the Section 8(a)(5) violation, the Board ordered the Company to execute a contract submitted by the Union, give the contract retroactive effect, and make the Company's employees whole for any losses suffered as a result of the Company's failure to sign the agreement. On June 19, 1974, the Board, in Docket No. 74-1872, applied to this Court for enforcement of its order and thereafter filed with this Court a certified list constituting the entire record in the proceeding before the Board in this matter.

2. On August 1, 1974, the United States District Court for the Southern District of New York in Case No. 73 B 909 reversed a decision of a bankruptcy judge permitting the Company to reject the same collective bargaining agreement which the Board had ordered executed in the decision and order before

the Court in Docket No. 74-1872. The Company filed a notice of appeal from that decision on August 13, 1974 in Docket No. 74-2154.

3. On August 26, 1974, the Board and the Company forwarded to this Court a Joint Motion for Entry of Partial Consent Judgment in Docket No. 74-1872 in which the Company agreed to the entry of a consent judgment by this Court enforcing the Board's order with respect to the violations of Sections 8(a)(1) and (3) of the Act and stipulated that it would not contest the Board's findings of fact and conclusions of law with respect to the violation of Section 8(a)(5). Insofar as the effect of enforcement in Docket No. 74-1872 of the Board's order remedying the Section 8(a)(5) violation is dependent upon the outcome of the Company's appeal in Docket No. 74-2154, the bankruptcy proceeding, the Board and the Company agreed that enforcement of the Section 8(a)(5) portion of the Board's order be held in abeyance pending the outcome of said bankruptcy proceeding.

4. The Board's decision and order before the Court in Docket No. 74-1872 will be part of the record on appeal in Docket No. 74-2154.

JOINT MOTION FOR
CONSOLIDATION OF CASES

5. Consolidation of the aforementioned two cases would conserve the Court's time as well as that of the parties, would avoid confusion as to the issues, and would otherwise serve the convenience of the Court.

WHEREFORE, the Board, the Company, and the Union jointly pray that their motion for consolidation of cases be granted.

Respectfully submitted,

Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board

By s/ Abigail Cooley
ABIGAIL COOLEY, Assistant General Counsel for Special Litigation
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570
Telephone: (202) 254-9221

Dated at Washington, D.C.
this 20th day of September,
1974.

By s/ Mitchel B. Craner
GUAZZO, SILAGI & CRANER
888 Seventh Avenue
New York, New York 10019
Telephone: (212) 757-7100

Dated at New York, N.Y.
this day of October,
1974.

Belle Harper
By s/ Sipser Weinstock Harper & Dorn
SIPSER, WEINSTOCK, HARPER & DORN
380 Madison Avenue
New York, New York 10017
Telephone: (212) 867-2100

Dated at New York, N.Y.
this 15 day of Oct., 1974

SERVICE OF 1 ~~COPIES~~ copy OF THE WITHIN

Appendix

IS HEREBY ADMITTED.

DATED: Dec 4, 1974

Syposer Weinstock Hayes + Dorn

Attorneys for Appellant-appellee
Shopmen's Local Union #455

STATE OF NEW YORK
COUNTY OF NEW YORK

BERT MYERS being duly sworn deposes and says: On December 4th, 1974 I served the within ~~record on appeal brief~~ appendix on Sandy McCandless, Special Litigation National Labor Relations Board the attorney for the ~~respondent~~ APPELLEE by ~~leaving~~ mailing ~~three copies~~ one copy thereof at his office located at 1717 Pennsylvania Avenue, N.W. Washington, D.C. 20570

Bert Myers

Sworn to before me this 4th day of December, 1974

Theresa Corless

THERESA CORLESS
Notary Public, State of New York
No. 4518917
Qualified in Bronx County
Term Expires March 30, 1976